रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 38] नई दिल्ली, सितम्बर 15—सितम्बर 21, 2019, शनिवार/भाद्र 24—भाद्र 30, 1941

No. 38] NEW DELHI, SEPTEMBER 15— SEPTEMBER 21, 2019, SATURDAY/BHADRA 24— BHADRA—30, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 30 अगस्त, 2019

का.आ. 1690.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नोटिस अवधि में छूट देते हुए भारतीय स्टेट बैंक की प्रबंध निदेशक सुश्री अंशुला कांत के त्याग-पत्र को दिनांक 31.8.2019 (अपराह्न) से स्वीकार करती है।

[फा. सं. 13/4/2018-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 30th August, 2019

S.O. 1690.—In exercise of the powers conferred by the State Bank of India Act, 1955 (23 of 1955), the Central Government hereby accepts the resignation of Ms. Anshula Kant, Managing Director, State Bank of India, with effect from 31.8.2019 (afternoon), in relaxation of the notice period.

[F. No. 13/4/2018-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 30 अगस्त, 2019

का.आ. 1691.—बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1980 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री सिंधु पिल्लई ए. (निदेशक, भारत सरकार, वित्त मंत्रालय, वित्तीय सेवाएं विभाग) को तत्काल प्रभाव से और अगले आदेशों तक, श्री प्रशांत गोयल के स्थान पर ओरियंटल बैंक आफ कामर्स के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 6/3/2012-बीओ-I (खंड-II)]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 30th August, 2019

S.O. 1691.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the Central Government hereby nominates Ms. Sindhu Pillai. A. (Director, Government of India, Ministry of Finance, Department of Financial Services) as Director on the Board of Oriental Bank of Commerce, with immediate effect and until further orders, *vice* Shri Prashant Goyal.

[F. No. 6/3/2012-BO-I (Vol. II)]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1692.–भारतीय जीवन बीमा निगम अधिनियम,1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री देवाशीष पण्डा, अपर सचिव, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, उक्त निगम का सदस्य नियुक्त करती है।

[फा. सं. 14/3/2003-बीमा-I]

उमेश चन्द्र, अवर सचिव

New Delhi, the 11th September, 2019

S.O. 1692.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation of India Act, 1956 (31 of 1956), the Central Government hereby appoints Sh. Debasish Panda, Additional Secretary, Department of Financial Services, as member of the said Corporation with immediate effect and till further orders.

[F. No. 14/3/2003-Ins. I]

UMESH CHANDRA, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 30 अगस्त, 2019

का.आ. 1693.–केन्द्रीय सरकार एतत्द्वारा दिल्ली विशेष पुलिस संस्थापन अधिनियम 1946 (1946 के अधिनियम सं 25) की धारा (6) के साथ पठित धारा की उपधारा (1) द्वारा प्रदत अधिकारों का उपयोग करते हुए, कर्नाटका सरकार, गृह विभाग (क्राईम्स) की अधिसूचना संख्या ई–एचडी 08 पीसीआर 2019, बैंगलूरू दिनांक 19–08–2019 तथा शुद्धिपत्र अधिसूचना संख्या ई–एचडी 08 पीसीआर 2019, बैंगलूरू दिनांक 27–08–2019 से दी गई सहमति से, भारत सरकार, दिल्ली विशेष पुलिस संस्थापन के सदस्यों को –

(i) कोमर्शियल स्ट्रीट पुलिस स्टेशन, बैंगलूरू में दर्ज अपराध संख्या 73/2019 में मामले की जॉच और आई एम ए, बैंगलूरू और उसके समूह संस्थाओं में निवेश से संबंधित अन्य सभी एफ आई आर, कर्नाटक राज्य में दर्ज की गई हैं।

(ii) आई एम ए, बैंगलूरू और उसके समूह संस्थाओं की सभी प्रकार की अवैध गतिविधियों की जॉच और पडताल, तथा।

(iii) आई एम ए, बैंगलूरू और उसके समूह के मामलों के संबंध में गतिविधियों में शामिल व्यक्तियों की पूछताछ और जॉच

और उक्त मामले में किए गए अपराधों के संबंध में या इसी तरह के लेन–देन के दौरान किए गए किसी भी अन्य अपराधों के संबंध में प्रयास, अपहरण और षड्यंत्र, समान तथ्यों से उत्पन्न होने वाले लेन–देन।

[सं. 228/23/2019–एवीडी–II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION

(Department of Personnel and Training)

New Delhi, the 30th August, 2019

S.O. 1693.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the Government of Karnataka State, Home Department (Crimes) issued vide Notification No. E-HD 08 PCR 2019, Bengaluru dated 19.8.2019 and its corrigendum issued vide No. E-HD 08 PCR 2019, Bengaluru dated 27.8.2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for :-

(i) Investigation of the case in Crime No. 73/2019 registered in Commercial Street Police Station, Bengaluru and all other FIRs related to investment in I Monetary Advisory (IMA), Bengaluru and its group entities lodged elsewhere in Karnataka State;

(ii) Enquire and investigate into all types of illegal activities of I Monetary Advisory (IMA), Bengaluru and its group entities;

(iii) Identification and investigation of persons involved in the illegal activities in connection with affairs of I Monetary Advisory (IMA), Bengaluru and its group entities-

and attempts, abetments and conspiracies in relation to or in connection with the offence(s) in the said cases and any other offence(s) committed in the course of same transaction arising out of the same facts.

[F. No. 228/23/2019- AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 30 अगस्त, 2019

का.आ. 1694.—केन्द्रीय सरकार एतत्द्वारा दिल्ली विशेष पुलिस संस्थापन अधिनियम 1946 (1946 के अधिनियम सं 25) की धारा (6) के साथ पठित धारा की उपधारा (1) द्वारा प्रदत अधिकारों का उपयोग करते हुए, कर्नाटका सरकार, गृह विभाग (क्राईम्स) की अधिसूचना संख्या ई–एचडी 08 पीसीआर 2019, बैंगलूरू दिनांक 19–08–2019 तथा शुद्धिपत्र दिनांक 23–08–2019 तथा 27–08–2019 से दी गई सहमति से, भारत सरकार, दिल्ली विशेष पुलिस संस्थापन के सदस्यों को –

(i) केन्द्रीय अन्वेषण ब्यूरो द्वारा साइबर अपराध पुलिस स्टेशन, बैंगलूरू सिटी मे सूचना प्रौद्योगिकि अधिनियम, 2000 की धारा 72 और भारतीय टेलिग्राफ अधिनियम, 1885 की धारा 26 के तहत दर्ज अपराध संख्या 6962/2019 की जांच।

(ii) केन्द्रीय अन्वेषण ब्यूरो द्वारा सत्तारुढ दल और विपक्षी दलों के साथ–साथ उनके सहयोंगियों, रिश्तेदारों और अन्य राजनीतिक नेताओं और सरकारी कर्मचारियों के टेलिफोनों के सभी अवैध/अनधिकृत/अवांछित अंतरावरोधनों की पूछताछ और जॉच पडताल, 1 अगस्त, 2018 से इस आदेष की तारीख तक।

(iii) केन्द्रीय अन्वेषण ब्यूरो द्वारा कई सत्तारुढ और प्रतिपदा के राजनीतिक नेताओं, उनके रिश्तेदारों और अन्य सरकारी अधिकारियों के कथित तौर पर अवैध/अनधिकृत/अवांछित टेलिफोन अवरोधन के संबंध में शमिल व्यक्तियों की पहचान और जांच पड़ताल।

और उक्त मामले में किए गए अपराधों के संबंध में या इसी तरह के लेन–देन के दौरान किए गए किसी भी अन्य अपराधों के संबंध में प्रयास, अपहरण और षड्यंत्र, समान तथ्यों से उत्पन्न होने वाले लेन–देन।

[सं. 228/22/2019–एवीडी–II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 30th August, 2019

S.O. 1694.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the Government of Karnataka State, Home Department (Crimes) issued vide Notification No. E-HD 33 COD 2019, Bengaluru dated 19.8.2019 and its two corrigendum of even number dated 23.8.2019 & 27.8.2019 respectively, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for :-

(i) Investigation of the Crime No. 6963/2019 lodged at Cyber Crime Police Station, Bengaluru City, under section 72 of the Information Technology Act, 2000 and section 26 of Indian Telegraph Act, 1885 by Central Bureau of Investigation ;

(ii) Enquiry and investigation by Central Bureau of Investigation into all illegal/unauthorized/unwanted interceptions of telephones of political leaders belonging to the ruling party and oppositions parties as well as their associates, relatives and also of the Government servants from 01 Aug. 2018 till the date of this order;

(iii) Identification and investigation by Central Bureau of Investigation, of persons involved in connection with alleged illegal/unauthorized/unwanted telephone interception of several ruling and opposition political leaders, their relatives and other Government officials -

and attempts, abetments and conspiracies in relation to or in connection with the offence(s) in the said case and any other offence(s) committed in the course of same transaction arising out of the same facts.

[F. No. 228/22/2019- AVD-II]

S.P.R. TRIPATHI, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 13 सितम्बर, 2019

का. आ. 1695.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ (1) में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के संबंध मे उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात :-

अनुसूची

प्राधिकारी का नाम और पता (1)	अधिकारिता का क्षेत्र (2)
श्री मनीष कुमार नाहर, अपर जिलाधिकारी (भू. आ. -द्वितीय), लखनऊ सक्षम प्राधिकारी लखनऊ ए.टी.एफ. पाइपलाइन परियोजना इंडियन ऑयल कार्पोरेशन लिमिटेड, (पाइपलाइन्स प्रभाग), बरौनी कानपुर पाइपलाइन अमौसी-226008 लखनऊ उत्तर प्रदेश	उत्तर प्रदेश राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी |

[फा. सं. आर-11025(11)/239/2017-ओआर-I/ई-13892]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 13th September, 2019

S.O. 1695.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorises the person mentioned in column (1) of the Schedule given below to perform the functions of the "Competent Authority" under the said Act, in respect of the area mentioned in column (2) of the said Schedule:

SCHEDULE

Name and Address of the Authority (1)	Area of jurisdiction (2)
Shri Manish Kumar Nahar, Additional District Magistrate (LA-2), Lucknow Competent Authority, Lucknow ATF Pipeline Project Indian Oil Corporation Limited, (Pipelines Division) Barauni Kanpur Pipeline, Amausi-226008 Lucknow Uttar Pradesh	State of Uttar Pradesh

This notification is applicable from the date of issue.

[F. No. R-11025(11)/239/2017-OR-I/E-13892]

P. SOMAKUMAR, Under Secy.

नई दिल्ली, 13 सितम्बर, 2019

का.आ. 1696.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडू राज्य के सेलम को केरल राज्य में भारत पैट्रोलियम कॉर्पोरेशन लिमिटेड़ की कोच्चि रिफाइनरी से तरलीकृत पेट्रोलियम गैस के परिवहन के लिए, एक पाइपलाईन कोच्चि सेलम पाइपलाईन प्राइवेट लिमिटेड़ द्वारा बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाईन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिये उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री बशीरकुंजू ए, सक्षम प्राधिकारी, कोच्चि सेलम पाइप लाइन प्राइवेट लिमिटेड, करुण एंक्लेव, द्वितीय तल, डोर नं. बी– 2, एस एन जंक्शन, रिफाईनरी रोड, यूनियन बैंक ऑफ इंडिया के सामने, त्रिपुनिथुरा, जिला ऐरनाकुलम, केरल – 682301 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

राज्य: केरल **जिला: ऐरनाकुलम** **तालुक: कुन्नाथुनाडू**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल (अनुमानित)		
		हेक्टेयर	एयर	वर्गमीटर
कुन्नाथुनाडू (खंड सं 36)	46/1	0	00	70
	146/2	0	07	20
	146/3	0	13	20
	147/7	0	22	00
	147/12	0	02	20
	150/2	0	04	95

कुन्नाथुनाडू (खंड सं 36)	150/3	0	04	50
	150/4	0	03	60
	151/7	0	01	50
	151/8	0	04	55
	151/9	0	04	25
	151/10	0	04	20
	151/11	0	04	75
	152/9	0	07	80
	152/10	0	02	15
	152/11	0	02	95
	160/5	0	02	40
	160/6	0	02	00
	160/7	0	01	10
	160/16	0	10	30
	160/17	0	02	70
	161/11	0	06	70
	161/12	0	02	75
	161/13	0	02	40
	161/14	0	03	30
	161/15	0	02	50
	168/4	0	05	80
	168/5	0	03	40
	168/6	0	03	00
	168/7	0	02	60
	168/15	0	06	20
	169/1	0	02	70
	169/3	0	06	40
	169/5	0	08	70
	169/6	0	06	45
	169/7	0	02	55
	174/8	0	05	90
	174/16	0	02	45
	174/17	0	10	30
	174/18	0	05	00
	175/6	0	04	85
	175/7	0	03	00
	191/3	0	07	45
	191/4	0	02	50
	191/7	0	05	80
	192/3	0	09	10
	192/4	0	04	65
	192/6	0	04	15
	192/7	0	01	50
	193/2	0	04	75
	193/9	0	05	60
	194/1	0	08	35
	194/2	0	09	35
	194/3	0	08	50
	194/4	0	05	85
	200/2	0	11	50
	200/6	0	06	85

कुन्नाथुनाडू (खंड सं 36)	358/1	0	01	95
	358/2	0	18	30
	359/1	0	04	30
	359/2	0	16	30
	383/4	0	00	65
	383/5	0	00	20
	385/7	0	10	50
	385/8	0	01	44
	385/9	0	00	51

[फा. सं. आर–12031/196/2017–ओआर–I/ई–19746]

पी. सोमाकुमार, अवर सचिव

New Delhi, the 13th September, 2019

S.O. 1696.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamil Nadu and that the a pipeline should be laid by M/s. Kochi – Salem pipeline Private Ltd;

And whereas, it appears to the Central Government that for the purpose of laying such pipelines, it is necessary to acquire the right of user in the lands under which such pipelines are proposed to be laid described in the schedule annexed to this notification;

Now therefore in the exercise of powers conferred by sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Central Act 50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person, interested in land described in the said schedule may, within 21 days from the date on which the copies of this notification, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein or laying or the pipeline under the land to Sri. Basheerkunju. A, Competent Authority, Kochi-Salem Pipeline Private Ltd, Karun Enclave 2nd floor, Door No. B2, S.N. Junction, Refinery Road, Tripunithura, Pin – 682 301.

SCHEDULE

STATE : KERALA DISTRICT : ERNAKULAM TALUK :KUNNATHUNADU

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ. METERS
KUNNATHUNADU				
BLOCK. NO. 36	146/1	0	00	70
	146/2	0	07	20
	146/3	0	13	20
	147/7	0	22	00
	147/12	0	02	20
	150/2	0	04	95
	150/3	0	04	50
	150/4	0	03	60
	151/7	0	01	50
	151/8	0	04	55
	151/9	0	04	25
	151/10	0	04	20
	151/11	0	04	75
	152/9	0	07	80
	152/10	0	02	15

KUNNATHUNADU	152/11	0	02	95
BLOCK. NO. 36	160/5	0	02	40
	160/6	0	02	00
	160/7	0	01	10
	160/16	0	10	30
	160/17	0	02	70
	161/11	0	06	70
	161/12	0	02	75
	161/13	0	02	40
	161/14	0	03	30
	161/15	0	02	50
	168/4	0	05	80
	168/5	0	03	40
	168/6	0	03	00
	168/7	0	02	60
	168/15	0	06	20
	169/1	0	02	70
	169/3	0	06	40
	169/5	0	08	70
	169/6	0	06	45
	169/7	0	02	55
	174/8	0	05	90
	174/16	0	02	45
	174/17	0	10	30
	174/18	0	05	00
	175/6	0	04	85
	175/7	0	03	00
	191/3	0	07	45
	191/4	0	02	50
	191/7	0	05	80
	192/3	0	09	10
	192/4	0	04	65
	192/6	0	04	15
	192/7	0	01	50
	193/2	0	04	75
	193/9	0	05	60
	194/1	0	08	35
	194/2	0	09	35
	194/3	0	08	50
	194/4	0	05	85
	200/2	0	11	50
	200/6	0	06	85
	358/1	0	01	95

KUNNATHUNADU	358/2	0	18	30
BLOCK. NO. 36	359/1	0	04	30
	359/2	0	16	30
	383/4	0	00	65
	383/5	0	00	20
	385/7	0	10	50
	385/8	0	01	44
	385/9	0	00	51

[F. No. R-12031/196/2017-OR-I/E-19746]

P. SOMAKUMAR, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 17 सितम्बर, 2019

का. आ. 1697.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है ;

और, उक्त अनुसूची में वर्णित क्षेत्र में अंतर्विष्ट ब्योरे रेखांक संख्या सी-I (ई) III/जीआर/948-0719, तारीख 16 जुलाई, 2019 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर - 440 001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक, खोज प्रभाग, केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना प्लेस, कांके रोड, रांची - 834 001, झारखंड के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता - 700 001 के कार्यालय में या जिला कलेक्टर, जिला छिंदवाड़ा (मध्य प्रदेश) के कार्यालय में किया जा सकता है ;

अत: अब केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित उस भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ।

उपरोक्त उल्लिखित अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति -

(i) भूमि के संपूर्ण या किसी भाग या उक्त भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप कर सकेगा; या

(ii) उक्त अधिनियिम की धारा 4 की उप-धारा (3) के अधीन की गयी किसी कार्यवाही से हुई या होने वाली संभावित किसी क्षति के लिए उक्त अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; या

(iii) उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्ति के प्रभावहीन होने के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनयम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत् उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा ;

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, क्षेत्रीय महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, पेंच क्षेत्र, तहसील परासिया, जिला छिंदवाड़ा-480441, मध्य प्रदेश या महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर - 440 001, महाराष्ट्र को भेज सकेगा।

अनुसूची

विष्णुपुरी यूजी टू ओसी खान

पेंच क्षेत्र

जिला छिन्दवाड़ा (मध्य प्रदेश)

[रेखांक संख्या सी-I (ई) III/जीआर/948- 0719, तारीख 16 जुलाई, 2019]

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल (हेक्टर में)			कुल	टिप्पणियां
					निजी	सरकारी	वन		
1.	सिरगोरा	17	परासिया	छिन्दवाड़ा	49.272	21.925	28.183	99.380	भाग
2.	छिन्दा	16	परासिया	छिन्दवाड़ा	24.462	0.138	1.942	26.542	भाग
3.	पिण्डरई	16	परासिया	छिन्दवाड़ा	28.131	19.283	11.365	58.779	भाग
4.	कुकुरमुण्डा	16	परासिया	छिन्दवाड़ा	133.052	29.286	95.107	257.445	भाग
कुल :					234.917	70.632	136.597	442.146	

कुल क्षेत्र : 442.146 हेक्टर (लगभग)

या 1092.54 एकड़ (लगभग)

1. ग्राम छिन्दा में अर्जित किए जाने वाले प्लाट संख्यांक :

निजी भूमि :-

234/2- 234/3, 236, 237, 239/2- 239/3, 240/4- 240/5-240/6- 240/7- 240/8, 241, 243, 244, 245, 246, 251, 259, 260, 261, 262, 263/1- 263/2- 263/3, 264, 266/1- 266/2- 266/3.

सरकारी भूमि :- 235.

वन भूमि :- 238 (भाग), 242.

2. ग्राम सिरगोरा में अर्जित किए जाने वाले प्लाट संख्यांक :

निजी भूमि :-

9/1- 9/2- 9/3, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 39, 23/1- 23/2- 23/3- 23/4, 25, 26/1- 26/2, 27/1- 27/2, 28/1- 28/2, 29, 30, 31, 33/1, 35/1- 35/2, 36, 185, 186/1, 187, 188/1- 188/2, 189, 191,

192, 193, 195, 201/1- 201/2, 202, 204, 206/1/1- 206/1/2- 206/2- 206/3, 207/1- 207/2- 207/3- 207/4, 239/1.

सरकारी भूमि :- 22, 24, 34, 190, 194, 196/2, 203/1- 203/2, 205/1 (भाग)- 205/2, 240.

वन भूमि :- 2 (भाग), 16/1 (भाग)- 16/2.

3. ग्राम पिण्डरई में अर्जित किए जाने वाले प्लाट संख्यांक :

निजी भूमि :-

3, 4, 5, 6, 7, 8, 9/1- 9/2, 10/1- 10/2, 11, 12, 166/1/1- 166/1/2- 166/1/3- 166/2, 167, 168/1- 168/2, 169/1- 169/2, 171, 172/1- 172/2- 172/3, 174/1- 174/2- 174/3- 174/4/1- 174/4/2, 176, 177, 178, 180.

सरकारी भूमि :- 173, 175, 179.

वन भूमि :- 13 (भाग), 170.

4. ग्राम कुकुरमुण्डा में अर्जित किए जाने वाले प्लाट संख्यांक :

निजी भूमि :-

1/1- 1/2, 2, 4, 6/1- 6/2, 7/1- 7/2- 7/3- 7/4- 7/5- 7/6, 8/1- 8/2- 8/3- 8/4- 8/5, 9/1- 9/2, 10, 11, 12, 13, 14, 15/1/1- 15/1/2- 15/2- 15/3- 15/4- 15/5, 16/1- 16/2- 16/3- 16/4- 16/5, 17/1- 17/2, 20/1- 20/2, 21/1- 21/2, 22, 23, 25/1- 25/2- 25/3- 25/4- 25/5- 25/6- 25/7, 26, 47, 48, 50, 51/1- 51/2- 51/3, 52, 53/1- 53/2- 53/3- 53/4- 53/5- 53/6- 53/7, 54/1- 54/2- 54/3- 54/4- 54/5- 54/6- 54/7, 55/1- 55/2- 55/3- 55/4- 55/5- 55/6- 55/7- 55/8- 55/9- 55/10- 55/11- 55/12- 55/13- 55/14- 55/15, 57, 58/1- 58/2- 58/3- 58/4, 59,60/1- 60/2, 61/1- 61/2- 61/3- 61/4- 61/5- 61/6, 62/1- 62/2- 62/3, 63, 64, 65/1- 65/2- 65/3- 65/4- 65/5- 65/6, 66, 67/1- 67/2- 67/3, 68/1- 68/2, 70/1- 70/2- 70/3, 71/1- 71/2- 71/3, 72/1- 72/2- 72/3- 72/4- 72/5- 72/6- 72/7- 72/8- 72/9- 72/10, 73/1/2- 73/2- 73/3, 74, 75/5-75/6, 76/3- 76/4, 77, 78, 79, 80, 81, 82, 83, 84, 85/3- 85/4, 87, 88, 89/1- 89/2/1- 89/2/2- 89/2/3- 89/2/4- 89/2/5- 89/2/6- 89/3, 90, 91, 92, 94, 95, 96/2, 97, 98, 99, 100, 101, 102/1- 102/2, 103, 104/1/1- 104/1/2-104/2- 104/3, 105, 107/1- 107/2, 108/1- 108/2, 109, 110/1- 110/2- 110/3, 112, 113, 114, 115, 116, 117/1- 117/2- 117/3- 117/4- 117/5, 118/1/2-118/2- 118/3- 118/4, 119, 120/1- 120/2- 120/3, 122, 123, 125, 126, 128/1- 128/2- 128/3, 129, 130/1/1- 130/1/2- 130/2/1- 130/2/2- 130/2/3- 130/2/4, 133, 134, 135/1- 135/2- 135/3- 135/4, 18/1- 18/2- 27, 28/1- 28/2, 29, 30/1- 30/2, 31/1- 31/2, 32/1- 32/2, 33/1- 33/2, 34, 35, 36, 37, 39/1- 39/2- 39/3- 39/4, 40/1- 40/2, 41/1- 41/2, 43/1- 43/2, 44, 45/1- 45/2- 45/3, 46/1- 46/2, 127/1- 127/2- 127/3- 127/4- 127/5- 127/6- 127/7- 127/8, 131.

सरकारी भूमि :- 5, 38, 42/1, 56, 93, 111, 136.

वन भूमि :- 3/1- 3/2, 19, 24/1 (भाग)- 24/2, 42/2, 49/1- 49/2, 85/1, 86, 106, 121, 124, 132.

सीमा वर्णन :-

क – ख : रेखा ग्राम पिण्डरई में बिन्दु 'क' से आरंभ से होकर ग्राम कुकुरमुण्डा में उत्तर दिशा से होती हुई फिर उत्तर-पश्चिम दिशा में प्लाट संख्यांक 74, 75/6- 75/5, 85/3, 70/3- 70/2- 70/1, 68/1 की बाह्य सीमा से होती हुई ग्राम कुकुरमण्डा और ग्राम छिन्दा की सम्मिलित ग्राम सीमा पर स्थित बिन्दु 'ख' पर मिलती है।

ख – ग : रेखा बिन्दु 'ख' से आरंभ होती है तथा ग्राम छिन्दा में उत्तर दिशा से होती हुई फिर उत्तर-पश्चिम दिशा में प्लाट संख्यांक 236, 238, 239/2 की बाह्य सीमा से होकर फिर उत्तर दिशा में प्लाट संख्यांक 239/2, 240/4, 266/1 की बाह्य सीमा से होती हुई ग्राम छिन्दा में बिन्दु 'ग' पर मिलती है।

ग - घ : रेखा बिन्दु 'ग' से आरंभ होती है और पूर्व दिशा में ग्राम छिन्दा में प्लाट संख्यांक 266/1- 266/2- 266/3, 263/3- 263/1- 263/2, 262, 259, 251, 244, 245, 246 की बाह्य सीमा से लगकर होती हुई ग्राम छिन्दा और ग्राम कुकुरमुण्डा की सम्मिलित ग्राम सीमा पर स्थित बिन्दु 'घ' पर मिलती है।

घ - ड. : रेखा बिन्दु 'घ' से आरंभ होती है और उत्तर-पूर्व दिशा में ग्राम कुकुरमुण्डा और ग्राम छिन्दा की सम्मिलित ग्राम सीमा से लगकर गुजरती है फिर ग्राम कुकुरमुण्डा में प्लाट संख्यांक 24/1, 8/1- 8/2- 8/3, 13, की बाह्य सीमा से लगकर होती हुई ग्राम कुकुरमुण्डा और ग्राम सिरगोरा की सम्मिलित ग्राम सीमा पर स्थित बिन्दु 'ड.' पर मिलती है।

ड. – च : रेखा बिन्दु 'ड.' से आरंभ होती है और ग्राम सिरगोरा में उत्तर दिशा से होती हुई सड़क के दक्षिण दिशा पर स्थित बिन्दु 'च' पर मिलती है।

च – छ : रेखा बिन्दु 'च' से आरंभ होती है और दक्षिण-पूर्व दिशा में प्लाट संख्यांक 9/3, 10, 19, की बाह्य सीमा से लगकर होती हुई उत्तर-पूर्व दिशा में प्लाट संख्या 20 की बाह्य सीमा से होकर फिर दक्षिण-पूर्व दिशा में प्लाट संख्यांक 34, 33/1, 36, की बाह्य सीमा से लगकर होती हुई बिन्दु 'छ' पर मिलती है।

छ – ज : रेखा बिन्दु 'छ' से आरंभ होती है और पश्चिम दिशा में प्लाट संख्या 33/1 की बाह्य सीमा से होकर फिर दक्षिण दिशा में सड़क पार करती हुई प्लाट संख्यांक 185, 186/1, 187, 196/2, 201, 205/1, की बाह्य सीमा से होती हुई ग्राम सिरगोरा में बिन्दु 'ज' पर मिलती है।

ज – झ : रेखा बिन्दु 'ज' से आरंभ होती है और दक्षिण-पश्चिम दिशा में प्लाट संख्यांक 205/1, 207/4, 237/1 की बाह्य सीमा से होती हुई ग्राम सिरगोरा में स्थित बिन्दु 'झ' पर मिलती है।

झ – क : रेखा बिन्दु 'झ' से आरंभ होती है और दक्षिण-पश्चिम दिशा से होती हुई ग्राम पिण्डरई में प्रवेश करती है फिर दक्षिण-पश्चिम दिशा में प्लाट संख्या 175 की बाह्य सीमा से होती हुई फिर पश्चिम दिशा में प्लाट संख्यांक 166/2, 13, 3, की बाह्य सीमा से लगकर होती हुई ग्राम पिडण्रई में प्रारंभिक बिन्दु 'क' पर समाप्त होती है।

[फा. सं. 43015/16/2019-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 17th September, 2019

S. O. 1697.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto;

And Whereas, the plan bearing number C-I(E)III/GR/948- 0719, dated the 16th July, 2019, containing the details of the areas described in the said Schedule may be inspected at the office of the Western Coalfields limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur – 440 001 (Maharashtra) or at the office of the Chief General Manager, Exploration Division, Central Mine Planning and Design Institute , Gondwana Palace, Kanke Road, Ranchi – 834 001, Jharkhand or at the office of the Coal Controller, 1, Council House Street, Kolkata – 700001 or at the office of the District Collector, District Chhindwara (Madhya Pradesh) ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule;

Any persons interested in the land described in the said Schedule may –

(i) object to the acquisition of the whole or any part of the land or of any rights in or over the said land; or

(ii) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act ; or

(iii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act;

to the Office of the Area General Manager, Western Coalfields Limited, Pench Area, Tehsil Parasia, District - Chhindwara-480441, Madhya Pradesh or General Manager, Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur – 440 001, Maharashtra within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Vishnupuri UG to OC Mine

Pench Area

District Chhindwara (Madhya Pradesh)

[Plan bearing number C-I(E)III/GR/948- 0719, dated the 16th July, 2019]

Sl. No.	Name of village	Patwari circle number	Tehsil	District	Area (in hectares)			Total	Remarks
					Tenancy	Govern-ment	Forest		
1.	Sirgora	17	Parasia	Chhindwara	49.272	21.925	28.183	99.380	Part
2.	Chhinda	16	Parasia	Chhindwara	24.462	0.138	1.942	26.542	Part
3.	Pindrai	16	Parasia	Chhindwara	28.131	19.283	11.365	58.779	Part
4.	Kukur-munda	16	Parasia	Chhindwara	133.052	29.286	95.107	257.445	Part
Total :					234.917	70.632	136.597	442.146	

Total area : 442.146 hectares (approximately)

or 1092.54 acres (approximately)

1. Plot numbers to be acquired in village Chhinda :-

Tenancy Land :-

234/2- 234/3, 236, 237, 239/2- 239/3, 240/4- 240/5-240/6- 240/7- 240/8, 241, 243, 244, 245, 246, 251, 259, 260, 261, 262, 263/1- 263/2- 263/3, 264, 266/1- 266/2- 266/3.

Government Land :- 235.

Forest Land :- 238 (Part), 242.

2. Plot numbers to be acquired in village Sirgora :-

Tenancy Land :-

9/1- 9/2- 9/3, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 39, 23/1- 23/2- 23/3- 23/4, 25, 26/1- 26/2, 27/1- 27/2, 28/1- 28/2, 29, 30, 31, 33/1, 35/1- 35/2, 36, 185, 186/1, 187, 188/1- 188/2, 189, 191, 192, 193, 195, 201/1- 201/2, 202, 204, 206/1/1- 206/1/2- 206/2- 206/3, 207/1- 207/2- 207/3- 207/4, 239/1.

Government Land :- 22, 24, 34, 190, 194, 196/2, 203/1- 203/2, 205/1 (Part)- 205/2, 240.

Forest Land :- 2 (Part), 16/1 (Part)- 16/2.

3. Plot numbers to be acquired in village Pindrai :-

Tenancy Land :-

3, 4, 5, 6, 7, 8, 9/1- 9/2, 10/1- 10/2, 11, 12, 166/1/1- 166/1/2- 166/1/3- 166/2, 167, 168/1- 168/2, 169/1- 169/2, 171, 172/1- 172/2- 172/3, 174/1- 174/2- 174/3- 174/4/1- 174/4/2, 176, 177, 178, 180.

Government Land :- 173, 175, 179.

Forest Land :- 13 (Part), 170.

4. Plot numbers to be acquired in village Kukurmunda :-

Tenancy Land :-

1/1- 1/2, 2, 4, 6/1- 6/2, 7/1- 7/2- 7/3- 7/4- 7/5- 7/6, 8/1- 8/2- 8/3- 8/4- 8/5, 9/1- 9/2, 10, 11, 12, 13, 14, 15/1/1- 15/1/2- 15/2- 15/3- 15/4- 15/5, 16/1- 16/2- 16/3- 16/4- 16/5, 17/1- 17/2, 20/1- 20/2, 21/1- 21/2, 22, 23, 25/1- 25/2- 25/3- 25/4- 25/5- 25/6- 25/7, 26, 47, 48, 50, 51/1- 51/2- 51/3, 52, 53/1- 53/2- 53/3- 53/4- 53/5- 53/6- 53/7, 54/1- 54/2- 54/3- 54/4- 54/5- 54/6- 54/7, 55/1- 55/2- 55/3- 55/4- 55/5- 55/6- 55/7- 55/8- 55/9- 55/10- 55/11- 55/12- 55/13- 55/14- 55/15, 57, 58/1- 58/2- 58/3- 58/4, 59,60/1- 60/2, 61/1- 61/2- 61/3- 61/4- 61/5- 61/6, 62/1- 62/2- 62/3, 63, 64, 65/1- 65/2- 65/3- 65/4- 65/5- 65/6, 66, 67/1- 67/2- 67/3, 68/1- 68/2, 70/1- 70/2- 70/3, 71/1- 71/2- 71/3, 72/1- 72/2- 72/3- 72/4- 72/5- 72/6- 72/7- 72/8- 72/9- 72/10, 73/1/2- 73/2- 73/3, 74, 75/5-75/6, 76/3- 76/4, 77, 78, 79, 80, 81, 82, 83, 84, 85/3- 85/4, 87, 88, 89/1- 89/2/1- 89/2/2- 89/2/3- 89/2/4- 89/2/5- 89/2/6- 89/3, 90, 91, 92, 94, 95, 96/2, 97, 98, 99, 100, 101, 102/1- 102/2, 103, 104/1/1- 104/1/2-104/2- 104/3, 105, 107/1- 107/2, 108/1- 108/2, 109, 110/1- 110/2- 110/3, 112, 113, 114, 115, 116, 117/1- 117/2- 117/3- 117/4- 117/5, 118/1/2-118/2- 118/3- 118/4, 119, 120/1- 120/2- 120/3, 122, 123, 125, 126, 128/1- 128/2- 128/3, 129, 130/1/1- 130/1/2- 130/2/1- 130/2/2- 130/2/3- 130/2/4, 133, 134, 135/1- 135/2- 135/3- 135/4. 18/1- 18/2- 27, 28/1- 28/2, 29, 30/1- 30/2, 31/1- 31/2, 32/1- 32/2, 33/1- 33/2, 34, 35, 36, 37, 39/1- 39/2- 39/3- 39/4, 40/1- 40/2, 41/1- 41/2, 43/1- 43/2, 44, 45/1- 45/2- 45/3, 46/1- 46/2, 127/1- 127/2- 127/3- 127/4- 127/5- 127/6- 127/7- 127/8, 131.

Government Land :- 5, 38, 42/1, 56, 93, 111, 136.

Forest Land :- 3/1- 3/2, 19, 24/1 (Part)- 24/2, 42/2, 49/1- 49/2, 85/1, 86, 106, 121, 124, 132.

Boundary description:

A – B : Line starts from Point 'A' in village Pindrai, passes in north direction in village Kukurmunda, then passes in north-west direction along the outer boundary of plot numbers 74, 75/6- 75/5, 85/3, 70/3- 70/2- 70/1, 68/1 and meets at point 'B' on common village boundary of villages Kukurmunda and Chhinda.

B – C : Line starts from point 'B', passes in north direction in village Chhinda, then passes in north-west direction along the outer boundary of plot numbers 236, 238, 239/2, then passes in north direction along the outer boundary of plot numbers 239/2, 240/4, 266/1 and meets at point 'C' in village Chhinda.

C – D : Line starts from Point 'C', passes in east direction in village Chhinda along the outer boundary of plot numbers 266/1- 266/2- 266/3, 263/3- 263/1- 263/2, 262, 259, 251, 244, 245, 246 and meets at point 'D' on common village boundary of villages Chhinda and Kukurmunda.

D – E : Line starts from point 'D', passes in north-east direction along the common village boundary of villages Kukurmunda and Chhinda, then passes in village Kukurmunda along the outer boundary of plot numbers

24/1, 8/1- 8/2- 8/3, 13 and meets at point 'E' on common village boundary of villages Kukurmunda and Sirgora.

E – F : Line starts from point 'E', passes in east direction in village Sirgora and meets at point 'F' on south side of road.

F – G : Line starts from point 'F', passes in south-east direction along the outer boundary of plot numbers 9/3, 10, 19, passes in north-east direction along the outer boundary of plot number 20, then again passes in south-east direction along the outer boundary of plot numbers 34, 33/1, 36 and meets at point 'G'.

G – H : Line starts from point 'G', passes in west direction along the outer boundary of plot number 33/1, then passes in south direction, crosses road, then passes along the outer boundary of plot numbers 185, 186/1, 187, 196/2, 201, 205/1 and meets at point 'H' in village Sirgora.

H – I : Line starts from point 'H', passes in south-west direction along the outer boundary of plot numbers 205/1, 207/4, 237/1 and meets at point 'I' in village Sirgora.

I – A : Line starts from point 'I', passes in south-west direction, enter into village Pindrai, continues in south-west direction along the outer boundary of plot number 175, passes in west direction along the outer boundary of plot numbers 166/2, 13, 3 and ends at starting point 'A' in village Pindrai.

[F. No. 43015/16/2019-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1698.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उपाध्यक्ष, दिल्ली विकास प्राधिकरण, विकास सदन, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली-1 के पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.01.2019 को प्राप्त हुए थे।

[सं. एल-42011/154/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th September, 2019

S.O. 1698.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2012) of the Central Government Industrial Tribunal-cum-Labour Court New Delhi-1 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice President, Delhi Development Authority, Vikas Sadan, New Delhi & Others, and their workmen which were received by the Central Government on 09.01.2019.

[No. L-42011/154/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DELHI

ID No. 24/2012

Shri Sunder Singh & 03 others, through
Shri Ramdas Yadav, Authorized Representative,
Delhi State General Mazdoor Union (Regd.),
House No.F-235, Vijay Vihar Phase I,
Delhi – 85 …Workman

Versus

The Vice President,
Delhi Development Authority, Vikas Sadan,
New Delhi …Management

AWARD

A reference was received from Ministry of Labour under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), by this Tribunal, vide letter No.L-42011/154/2011-IR(DU) dated 09.01.2012, for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Delhi Development Authority(DDA) in not paying the OT wages claim of Rs.1,43,802, Rs.1,43,802.00, Rs.1,29,8092, Rs.1,81,272 respectively for the period from 1984 to 1992, 1984 to 1992, 1995 to 1992, 1976 to 1993 respectively for 12 hours per day instead of 8 hours per day to (1) Shri Sunder Singh S/o Shri Bhanu Ram, (2) Shri Baij Nath S/o Shri Kik Lal, (3) Shri Braahm Pal S/o Shri Chatru and (4) Shri Satbir Singh S/o Shri Singh Ram is legal and justified? What relief the workman is entitled to?'

2. After receipt of the above reference, both the parties were put to notice and workmen herein filed statement of claim giving particulars of their employment which is as under :

Name of claimant and his father's name	Date of Appointment	Designation	Period of which overtime claimed	Amount claimed (Rs.)
Column No.1	Column No.2	Column No.3	Column No.4	Column No.5
Sunder Singh, S/o Shri Bhanu Ram	29.06.1981	Security Guard	06.03.1984 to December'92	1,81,272
Shri Baij Nath S/o Shri Kik Lal	12.02.1982	Security Guard	03.01.1984 to December'92	1,43,802
Shri Braham Pal, S/o Shri Chatru	21.08.1974	Security Guard	March'81 to December'92	1,43,802
Shri Satbir Singh, S/o Shri Singh Ram	21.08.1976	Security Guard	October'76 to March'93	1,29,802

3. It is also alleged in the statement of claim that the above claimants were appointed by Director (Horticulture), Delhi Development Authority, Rohini Office Complex, Delhi. Claimants had to work for 8 hours per day but the management used to take work from the claimant for 12 hours during the period mentioned above. However, the claimant was being paid wages only for 8 hours instead of 12 hours. Thus, he was not being paid overtime for four hours by the management. Letter was also sent regarding payment of overtime wages by DDA Employees Welfare Council to the management on 09.07.1991.

4. It is the case of the claimant that he came to know in December 2006 that one of his co-workers Shri Lakhan Singh, who was also appointed by the management and had rendered service with the management at several places was also working for 12 hours, was paid overtime wages by the management as per award dated 17.03.2004 passed by Shri D.K. Malhotra, Presiding Officer, Labour Court No.4, Karkardooma Courts, Delhi in L.C.A. No.196/1993 (Annexure 3). Thereafter, the claimant contacted other co-workers also and served demand notice /letter to the management in December 2006 stating that the management owed the claimants the amount of overtime wages as mentioned in Column No.5 for which the claimant has rendered during the period as mentioned in Column No.4 above. Attendance of the claimant was also marked in the attendance register during his duty hours inside Godown. Demand notice was served upon the management for adjudication of the dispute through DDA Employees Welfare Council on

09.07.1995 and office order dated 10.05.1995 was also issued by the management but no overtime wages was given to the claimant even thereafter. Calculation of dues for overtime by the claimant is fully detailed in Annexure 3. Without considering the case of the claimants Shri Sunder Singh, Shri Baijnath, Shri Brahm Pal and Shri Satbir Singh, the court in rejected the LCA application No.1/2007, 2/2007, LCA No.3/2007 and LCA No.4/2007 respectively vide order dated 01.08.2007.

4. Claim was contested by the management who filed written statement thereto, taking various preliminary objections, inter alia of resjudicata, maintainability, delay & laches etc. It was specifically averred that the rules prescribed for overtime is fully detailed in Rule 5 of Work Charge Manual-3 of CPWD manual. Claimants were never engaged for performing overtime work in the manner alleged by them. There exists no relationship of employer and employee between the claimants and the management as the claimants are now working with Municipal Corporation of Delhi (MCD) since 1990. Service record of the claimants were also handed over to MCD.

5. On merits, management has denied the factum of engagement of the claimants as Security Guard. In fact, the claimant was engaged on muster roll on temporary basis for execution of specific work and are paid as per provisions and rules of Minumum Wages Act. Salary was paid for the work charge post as per CPWD Manual. It is also denied that the claimant has worked for more than 8 hours with the management or performed any kind of overtime duty. There was no office order regarding performing of over time due and needful is detailed, as mentioned above, in the work charge manual of CPWD. There is prescribed format under Rule 5 for the same which is to be followed by the management. Since the claimants did not perform any overtime duty, as such, the question of payment of overtime allowance does not arise.

6. From the pleadings of the parties, my learned predecessor vide order dated 27.09.2012, framed the following issues and the case was listed for evidence of the claimant:

(i) Whether the claim is an individual dispute, for want of espousal by the union of the establishment, or considerable number of employees?

(ii) As in terms of reference

7. Claimants, filed their affidavits in evidence and only Shri Sunder Singh was examined in part. His examination in chief was deferred as he wanted to produce some documents. However, the claimants sought adjournments on one pretext or the other and finally evidence of the claimant was closed on 12.03.2015. Learned A/R for the management stated that no evidence is to be led by the management as such evidence of the management was also closed.

8. From the above, it is apparent that the claimants are no more interested in progress of the case on merits. Therefore, the Tribunal is left with no other alternative but to pass a 'No claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, claimant is still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated : 4.1.2019

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1699.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रशासनिक अधिकारी, स्वच्छ गंगा के लिए राष्ट्रीय मिशन, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 04/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.08.2019 को प्राप्त हुए थे ।

[सं. एल-42012/44/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. 1699.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2018) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Administrative Officer, National Mission for Clean Ganga, New Delhi & Others, and their workmen which were received by the Central Government on 28.08.2019.

[No. L-42012/44/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No.1, DELHI

ID No.4/2018

Shri Sehdev Pradhan,
R/o House No.140, Village Pillanji,
Kotla Mubarakpur,
New Delhi – 110 003 …Workman

Versus

(i) The Administrative Officer,
National Mission for Clean Ganga,
Government of India,
MTNL Building,
CGO Complex,
New Delhi 110 003

(ii) The Director/Partner,
M/s. Siddartha Security Placement Agency,
D-1/29, Janakpuri,
New Delhi – 110 058 …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No. L-42012/44/2017-IR(DU) dated 20.12.2017 for adjudication of an industrial dispute with the following terms:

> 'Whether the services of Shri Sehdev Pradhan has been illegally terminated from the establishment of National Mission for Clean Ganga and if so, what relief is he entitled and what directions are necessary in this respect? (2) Whether the contract between the management of National Mission for Clean Ganga and their contractor is sham and camouflage, if yes, whether the workman is entitled to be on permanent roll of the management of National Mission of Clean Ganga?'

2. Claim statement was filed by Shri Sehdev Pradhan, the claimant, averring therein that he was working since 05.01.2012 with National Mission for Clean Ganga through M/s Siddartha Security Placement Agency as Security Guard. His last drawn wages was Rs.9,531.00 per month. The claimant proceeded on leave from 23.04.2015 and thereafter joined back on 01.06.2015. However, he was not allowed to join duties with effect from 02.06.2015 and thereafter he was recalled on 10.07.2015 and performed his duties upto 17.07.2015. Thereafter, the management did not allow him to resume duties from 18.07.2015. The management was not keeping proper records of appointment letter, leave etc. of the claimant, thus indulging in unfair labour practice. The action of the management in not allowing the claimant to join duties amounts to illegal termination and therefore he is entitled for reinstatement in service with continuity and full back wages. The claimant is unemployed from the date of his termination. Demand notice was served on the management on 01.09.2015. Finally, it has been prayed that the claimant may be reinstated in service with full back wages.

3. Statement of defence was filed on behalf of National Mission for Clean Ganga (in short the management) taking various preliminary submissions, i.e. the claimant not approaching the court with clean hands, lack of jurisdiction of the

Tribunal, Claimant having no locus standi, the case not being an industrial dispute, misjoinder of parties etc. The management has denied the averments made in the statement of claim.

4. Statement of defence was also filed on behalf of M/s Siddartha Security Placement Agency (in short the contractor) wherein preliminary submissions have been taken, i.e. the claimant having no locus standi , concealment of facts, claimant being quarrelsome, Claimant not reporting at his transferee office etc. The contractor has denied the other material averments contained in the statement of claim.

5. Thereafter, the case was listed for filing of rejoinder and framing of issues. But despite affording of various opportunities, neither the claimant nor any authorized representative on his behalf put in appearance. Thus, it is apparent that the claimant is no more interested in pursuing his case on merits. Under such circumstances, this Tribunal is left with no other alternative but to pass a 'No claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, the claimant is still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated : August 22, 2019

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1700.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रशासनिक अधिकारी, स्वच्छ गंगा के लिए राष्ट्रीय मिशन, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 05/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.08.2019 को प्राप्त हुए थे ।

[सं. एल-42012/43/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. **1700**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2018) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Administrative Officer,National Mission for Clean Ganga ,New Delhi & Others, and their workmen which were received by the Central Government on 28.08.2019.

[No. L-42012/43/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DELHI

ID No. 5/2018

Shri Sushant Pradhan,
R/o House No.140, Village Pillanji,
Kotla Mubarakpur,
New Delhi – 110 003 …Workman

Versus

(i) The Administrative Officer,
National Mission for Clean Ganga,
Government of India,
MTNL Building,
CGO Complex,
New Delhi 110 003

(ii) The Director/Partner,
M/s. Siddartha Security Placement Agency,
D-1/29, Janakpuri,
New Delhi – 110 058 …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42012/43/2017-IR(DU) dated 20.12.2017 for adjudication of an industrial dispute with the following terms:

'Whether the services of Shri Sushant Pradhan S/o Sehdev Pradhan has been illegally terminated from the establishment of National Mission for Clean Ganga and if so, what relief is he entitled and what directions are necessary in this respect? (2) Whether the contract between the management of National Mission for Clean Ganga and their contractor is sham and camouflage, if yes, whether the workman is entitled to be on permanent roll of the management of National Mission of Clean Ganga? '

2. Claim statement was filed by Shri Sushant Pradhan, the claimant, averring therein that he was working for the last two years with National Mission for Clean Ganga through M/s Siddartha Security Placement Agency as Security Guard. His last drawn wages was Rs.9,531.00 per month. The claimant was not allowed to join duties with effect from 11.07.2015. The management was not keeping proper records of appointment letter, leave etc. of the claimant, thus indulging in unfair labour practice. The action of the management in not allowing the claimant to join duties amounts to illegal termination and therefore he is entitled for reinstatement in service with continuity and full back wages. The claimant is unemployed from the date of his termination. Demand notice was served on the management on 01.09.2015. Finally, it has been prayed that the claimant may be reinstated in service with full back wages.

3. Statement of defence was filed on behalf of National Mission for Clean Ganga (in short the management) taking various preliminary submissions, i.e. the claimant not approaching the court with clean hands, lack of jurisdiction of the Tribunal, Claimant having no locus standi, industrial dispute, misjoinder of parties etc. The management has denied the averments made in the statement of claim.

4. Statement of defence was also filed on behalf of M/s. Siddartha Security Placement Agency (in short the contractor) wherein preliminary submissions have been taken, i.e. the claimant having no locus standi , concealment of facts, claimant being quarrelsome, Claimant not reporting at his transferee office etc. The contractor has denied the other material averments contained in the statement of claim.

5. Thereafter, the case was listed for filing of rejoinder and framing of issues. But despite affording of various opportunities, neither the claimant nor any authorized representative on his behalf put in appearance. Thus, it is apparent that the claimant is no more interested in pursuing his case on merits. Under such circumstances, this Tribunal is left with no other alternative but to pass a 'No claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, the claimant is still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated : August 22, 2019

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1701.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, उत्तरी दिल्ली नगर निगम, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 195/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/09/2019 को प्राप्त हुए थे ।

[सं. एल-42011/97/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. 1701.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 195/2015) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, North Delhi Municipal Corporation, New Delhi & Others, and their workmen which were received by the Central Government on 04.09.2019.

[No. L-42011/97/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 195/2015

Shri Nitan and 14 others
C/o.MCD General Mazdoor Union,
Room No.95, Barracks No.1/10,
Jam Nagar House, Shahjahan Road
New Delhi. …Workmen

Versus

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi 110002. …Management

AWARD

This Award shall dispose of a reference which was made to this Tribunal by the appropriate Government vide its letter No. L-42011/97/ 2015-IR(DU) dated 1.09.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the termination of the services of Shri Nitin and 13 others is legal and justified ? If not, to what relief are they entitled to ?'

2. Both parties were put to notice and the claimants/workmen filed their joint statement of claim with the averments that the Management advertised in Dainik Jagran newspaper for employment of Malaria Beldars for 90 days. The Management recruited the claimants as Malaria Beldar/Field Workers as direct employees and without the help of any contractor.

The particulars of the workmen, date of their employment and date of termination etc. as per statement of claim, are as under :-

Sl.No.	Name of Workan	Father's name	Date of Employment	Date of Termination
1	Nitin	Mahender Singh	7.8.2010	18.11.2010
2	Deepak	Jagpal	7.8.2010	18.11.2010
3	Mohd.Akram	Samsudeen	7.9.2010	18.12.2010
4	Balram	Ch.Brahm Singh	7.9.2010	18.12.2010
5	Pradeep Kumar	Vinod Kumar	7.8.2010	18.11.2010
6	Neeraj Saini	Jai Prakash	7.9.2010	18.12.2010
7	Ran Singh	Suraj BNhan	7.8.2010	18.11.2010
8	Radhey Shyam	Suraj Lal	7.9.2010	18.12.2010
9	Praveen	Ghordhandass	7.8.2010	18.11.2010
10	Vinod Kumar	Tara Chand	7.9.2010	18.12.2010

11	Manoj	Prakash	7.9.2010	18.12.2010
12	Satish Kumar	Chatrusen	7.9.2010	18.12.2010
13	Vijay Kumar	Babu Lal	7.9.2010	18.12.2010
14	Sachin	Hari Shankar	7.9.2010	18.12.2010
15	Saurabh	Surender Kr.	7.8.2010	18.11.2010

It is pleaded that the Management knowingly gave artificial break to the workmen herein with a view to deny them regular and permanent status. Similarly situated workmen in the category of AMI are still working with the Management as they were also appointed only for 89 days. 34 Nos. of posts for regular Malaria Beldars/Field Workers are still vacant with the Management.

It is also pleaded that the services of the workmen have been terminated w.e.f. 18-11-2010 or 18-12-2010 without any notice and even persons juniors to them are retained in service and even fresh hands were also recruited, which action of the Management is in violation of Section 25-G and H of the Act and amounted to unfair labour practice. Prayer has been made for reinstatement of the workmen with full back wages and continuity of service.

3. The Management resisted the claim of the workmen/claimants inter-alia on the grounds that no demand notice was served upon the Management; claimants were engaged for a specific work and for specific period during Common Wealth Games, 2010 due to exigency of work, that too on contract basis for a period of 89 days only, that is to say for conducting anti larval activities and as such the claim is barred under Section 2(oo)(bb) of the Act. It is denied that 34 regular Malaria Beldar/Field Workers posts are vacant or that junior persons have been retained in service. Prayer has been made for dismissal of claim petition with costs.

4. The claimants/workmen filed rejoinder and denied all the allegations made by the Management and reiterated their own case as set up in the claim petition.

5. On the pleadings of the parties, following issues were framed on 2/9/2016 :-

1) Whether the claim is not legally maintainable in view of various preliminary objections?

2) As in terms of reference.

6. The Claimants in support of their case examined Shri Nitin as W.W.1 who tendered hid affidavit Ex.WW1/A and relied on the documents Ex.WW1/1. On the other hand, the Management in order to rebut the case of the claimants, examined Dr. Om Prakash Gahlot, Deputy Health Officer who tendered his evidence by way of affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW3.

7. I have heard Shri B.K. Prasad, A/R for the claimants and Shri Madan Sagar, A/R for the Management and have gone through the records carefully. My findings on above issues are as follows.

Issue No. 1 and 2 :-

8) Both these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of.

9) Testimony of the workman Nitin Kumar who appeared in the witness box as WW1 in line with the averments made in the claim petition. He admitted that he was engaged for 89 days but denied the suggestion that he was engaged on contract basis. He asserted that he joined the Management on 7/8/2010. However, he showed his ignorance as to when other workmen namely Deepk, Mohd. Akram, Balram, Pradeep Kumar, Neeraj Saini etc. joined the management or that 185 Nos. of candidates were interviewed. **He however, admitted that 34 candidates were selected as Field Workers for 89 days and 15 candidates were waitlisted.**

10. In his testimony, MW1 -Dr. Om Prakash Gahlot has deposed that the workmen/claimant were engaged for a specific period as per requirement of the Management i.e. from 21/9/2010 to 18/12/2010 as Field Worker/Malaria Beldar on contractual basis for 89 days, for conducting anti larval activities during Common Wealth Games, 2010. He filed on record copy of the list of candidates who were selected as MW1/2 and details of payment of wages made to the workmen as Ex.MW1/3 (colly.). He also specifically deposed that neither any person junior to the claimants/workmen were retained in service nor any person out of them was further engaged for any service by the Management.

11. It is manifest from the pleadings of the parties and evidence adduced on record that **after giving wide publicity through newspaper, the Management of MCD engaged unskilled Malariya Beldars, for 89 days, on contractual basis for the purposes of anti-malaria activities of Common Wealth Games sites at Delhi. Out of 185 candidates applied for the said job, 34 candidates were selected and engaged for 89 days, whereas a waiting list of 15 candidates was also prepared. The workmen/claimants were out of those 34 selected candidates and were**

deployed in Civil Lines Zone of MCD. as is apparent from document Ex.MW1/2. as is apparent from document Ex.MW1/1A.

12. **A**ccording to the Management, the claimants/workmen were engaged for a specific work and for a specific period of 89 days, on contract basis as Field Worker/Malaria Beldar for conducting anti larval activities during Common Wealth Games, 2010, whereas as per claim of the claimants/workmen they worked for about 102/103 days, prior to their discharge/termination. However, the fact remains that they worked with the Management for less than 240 days in a calendar year.

13. During the course of arguments, learned A/R appearing for the claimants/workmen heavily relied on the judgement of our own High Court in **W.P.(C) No.6024/1999 (titled as MCD Vs. Presiding Officer, Industrial Tribunal and another- decided on 25/8/2011)** to buttress his submission that the Management was required to follow the principles of Section 25-G of the Act while retrenching the claimants herein. There is no dispute about preposition of law that the workmen who have not completed 240 days of service, have also got industrial rights for redressal of their grievance against retrenchment, as provided under Section 25-G and 25-H of the Act, The workmen is required to plead and prove that while effecting retrenchment, the employer violated the rule of "last come, first go" without any tangible reason. I may mention that in the instant case, although the workmen have simply pleaded that the Management have retained the persons junior to them (without giving the names of those juniors), **but no positive or cogent evidence has been brought on record to show that the Management in violation of the provisions of Section 25-G of the Act, have retained the workers junior to the workmen/claimants herein.** Ld. A/R appearing for the workmen/claimants strenuously argued that the Management in contravention of the provisions of Section 25-G of the Act, had given extension for six months vide office order dated 22/8/2014 (Ex.MW1/W-1), to 24 Field Workers who were appointed on contract basis. To my mind, this document Ex.MW1/W-1 is of no help to the case of the claimants./workmen as from that document it can not be concluded that the workers whom the Management had given extension for six months on contract basis, were junior to the claimants, or that they were recruited afresh after retrenchment of the workmen in the year 2010, without giving any preference of engagement to the claimants/workmen as provided under Section 25-H of the Act. The claimants/workmen have not led any evidence to show that the Management has in fact, retained any person junior to the workmen or that while engaging fresh workers as Malaria Beldar/Field Worker, they were not given any preference. As such, there is nothing on record to suggest that the Management violated the provisions of Section 25-G or 25-H of the Act, while disengaging the workmen/claimants herein.

13. In the instant case, the Management has taken a definite stand that the workmen were engaged for specific work and for specific period on contractual basis for 89 days, for conducting anti larval activities during Common Wealth Games, 2010. This fact has also been testified by MW1 in his testimony and also stands proved from the perusal of document Ex.MW1/2. Therefore, the provisions of Section 2(oo)(bb) of the Act are applicable to the facts of the case. Section 2(oo)(bb) of the Act clearly provides that termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, **does not amount to retrenchment. As mentioned above, the workmen /claimants have not led any cogent evidence to show that the Management violated the provisions of Section 25-G or 25-H of the Act, while disengaging/terminating their services, after expiry of contractual period of 89 days.** Even otherwise, the claimants have neither pleaded nor proved that they are unemployed since after their disengagement / termination in 2010, though they have sought reinstatement into service with full back wages. Even no demand notice is stated to have served upon the Management, prior to raising the dispute, which seems to have been raised only in the year 2015.

14. As a sequel to the above discussion, action of the Management in terminating the services of the workmen Nitin and others can not be held to be unjust, improper or illegal. These issues are accordingly decided in favour of the Management and against the workmen/claimants herein.

Relief :-

15. In view of my findings on issue No.1 and 2 above, this Tribunal is of the considered view that the claimants/workmen herein are not entitled to any relief. Award is passed accordingly.

Dated : 2.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1702.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, सीजीएचएस, केंद्रीय स्वास्थ्य परिवार कल्याण मंत्रालय निर्माण भवन, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 66/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.08.2019 को प्राप्त हुए थे ।

[सं. एल-42012/30/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. 1702.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2014) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, CGHS, Kendriya Swasthya Pariwar Kalyan Mantralaya. Nirman Bhawan, New Delhi & Others, and their workmen which were received by the Central Government on 28.08.2019.

[No. L-42012/30/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No.66/2014

1. Shri Ram Chander and others
   B-38, NPL Colony, New Rajinder Nagar,
   New Delhi.

2. Abdul Razaq s/o. late Shri Chotey Khan,
   L-46/1, Street No.12, Brahmpuri,
   New Delhi 110053.

3. Amit Awasthi,
   So. Ramesh Chandra Awasthi,
   r/o. E-191 Rajeev Nagar,
   Yashoda Nagar, Kanpur,
   Uttar Pradesh. …Workmen

Versus

1. The Director,
   CGHS, Kendriya Swasthya Pariwar Kalyan Mantralaya,
   Ministry of Health and Family Welfare,
   Nirman Bhawan, New Delhi 110011.

2. National Informatics Centre,
   A Block, CGO Complex, Lodhi Road,
   New Delhi 110003.

3. The Director,
   NICSI, Hall No.2 & 3, 6th Floor,
   NBCC Tower,
   15 Bhikaji Cama Palace, New Delhi 110066. …Management/s

AWARD

A reference was made to this Tribunal by the appropriate Government vide letter No.L-42012/30/2014/IR(DU) dated 15.07.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether services of the workmen Shri Ram Chander and others can be regularized in the establishment of CGHS as they have been working in the establishment since 5 to 7 years on continuous basis ? If not, what relief the workmen concerned are entitled to ? '

2. The above reference was registered as ID No. 66/2014. Both parties were put to notice and the claimants being a group of 267 workmen filed their statement of claim with the averments that they have been working as Data Entry Operator and Operation Managers with Ministry of Health & Family Welfare for their Central Govt. Health Scheme (CGHS) under CGHS Dispensary Computerization Project, since 2005-2006. They had joined the services after undergoing the interview and technical test conducted by the officers of the CGHS and assisted by the Officers of NIC and NICSI and thereafter the workmen were selected & posted/transferred to different locations for which the transfer order were issued and acceded by the office of the CGHS. A list containing details/particulars of 267 workmen has been annexed with the statement of claim. It is pleaded that the workmen are performing the functions as given by CGHS and were recruited by CGHS**.** The workmen are involved in many functions such as registration of patients, medical reimbursements of the claims/ permission of the patients, local area networking amongst dispensaries of the management, training and supervision of newly appointed management staff, which functions are integral and perennial in the dispensation of the work involved with the management of CGHS. On 30/8/2013 Shri Gulam Nabi Azad, the then Minister of Health & Family Welfare had replied to a question regarding DEO's in CGHS that as on date, the Data Entry Operators, whose services are outsourced through Informatics Centre Service Inc. (NISCI) are working as at CGHS dispensaries against the vacant posts of Lower Division Clerks (LDCs). Management No.1 which provides comprehensive care facilities for the Central Govt. employees and pensioners & their dependents, started its operation in 1954, whereas Management No. 2 being a builder of e-Govt./e-governance applications, NICSI provides total IT solutions to the Govt. organizations. Management No1 CGHS has been indulging in violation of labour laws and committing unfair labour practices alongwith and in connivance with Management of NIC and NICSI. It is also pleaded that CGHS issued discontinuation letter with respect to DEOs firstly on 21/1/2014 asking them to make alternate arrangements, then on 21/3/2014 mentioning that services of DEOs (contractual staff) shall not be extended beyond 31/3/2014 and notice dated 27/3/2014 stagint discontinuation of their services and reminding Management No.1 to initiate fresh recruit0ment of DEOs through in house tender. On 29/4/2014 CGHS issued another letter approving for engagement of Group C on outsource basis against vacant posts of LDCs and discontinuation of services of DEOs in Jaipur. CGHS again issued office orders on 27/6/2014 regarding discontinuation of services of the DEOs recruited by NICSI, w.e.f. 30/6/2014. Thereafter corrigendum letter dated 30/6/2014 was issued by CGHS stating that the workmen are eligible to continue their services till 31/7/2014 and thereafter their services shall be terminated. Finally on 23/7/2014 CGHS issued a letter to stop the services of DEOs from 1/8/2014. Attendance of the workmen was taken by CGHS on Biometric machines as well as on the attendance register but their last drawn salary was Rs.9500/- per month, whereas salary structure for Date Entry Operator as available on the website of NICSI was more than Rs.15000/- per month. The workmen have been issued identity cards duly signed and with the seal of Officers of Management of CGHS. It has been prayed that (a) all the 267 workmen be declared as regular & permanent employees of CGHS and to pay them wages & privileges from the date of their appointment; (b) CGHS be directed to continued with the workmen and to pay them minimum wages with PF, gratuity etc. and to provide them other benefits with retrospective effect.

3. Management No.1 resisted the Claim petition by filing written statement and took preliminary objections inter alia that this Tribunal has no jurisdiction to entertain the petition as it is a policy matter and substantive appointments can be made against substantive post and in absence of substantive post or vacant post, no appointment can be made and further that, the claimants have not approached the Tribunal with clean hands. While denying all the allegations of the claimants/ workmen including involvement of CGHS in interviews or technical tests of the workmen for engaging them, it has been stated that CGHS had initiated computerization project of its dispensaries and offices in 2006 which was extended to other cities in 2008. The techno-managerial manpower for completion of the project was outsourced to NICSI and the project was completed in three years. However, outsourced manpower through NICSI was required for another three years for stabilization of the project. MOU was signed among Management No.3, 4 and 5 on 3/12/2008. Role of NICSI was to provide support services for programming for techno managerial support. Total manpower required, their duties and designation all were decided by NICSI so as to provide Techno Managerial support that was requisitioned by CGHS to implement its computerization project. Control, transfer and management of claimants was in fact done by Management of NICSI. It is alleged that workmen posted at different centres were required to mark their attendance because at the end of each month, heads of offices where they worked, had to issue a certificate of performance and leave/s availed by the workmen who in turn submitted to the empanelment agencies through whom they were recruited, for release of their salaries. Payment of salary to contract employees is within the purview of

empanelment agencies of NICSI and that CGHS has no role in it. Prayer has been made for dismissal of the claim petition with costs.

4. Management No.3 NICSI filed its written statement and took preliminary objections inter-alia that neither the Management of NICSI appointed the workmen nor terminated their services. The Management is not responsible to enforce their service conditions or to pay remuneration/compensation to the workmen because the workmen seems to be employees of empanelled vendors. This Management having been set up in 1995 under Section 25 of Companies Act under National Informatics Center (Department of Electronics & Information Technology), Ministry of Communications and Information Technology, Govt. of India, as a matter of rule and practice it works only as a facilitator between manpower provider and the needy organization so far as the manpower component of the project for which services of NICSI are sought by any organization. In the instant case, CGHS is the needy organization, whereas M/s E-Centric Solutions Pvt. Ltd, B-1/50 Malviya Nagar, New Delhi and M/s IAP Company Pvt. Ltd., A-Block, Palam Vihar, Gurgaon (Haryana) are the empanelled vendors/ manpower providers which firms supplied Data Entry Operators to CGHS and CGHS allowed Data Entry Operators to work from its premises & availed the services of DEOs. As per the arrangement, it is the responsibility of the empenalled vendor to appoint, pay remuneration and determine/enforce service conditions of DEOs and also responsible for issuing appropriate identity cards. According to it, CGHS releases payment to NICSI, which further releases payment to aforesaid empanelled vendors for supply of manpower.

5. Management No.2 filed written statement and has taken a stand that it is providing services to CGHS as per MOU and that the workmen are not its employees.

6. The claimants/workmen filed rejoinders reiterating their own case as set up in the statement of claim and denied the allegations of the Management as made out in the written statement.

7. On the pleadings of the parties, following issues were framed on 10/5/2016 :

(I) Whether the reference is not legally maintainable in view of the preliminary objections ?

(II) As in terms of reference ?

(III) Relief.

8. In order to prove their case, the claimants examined themselves as WW1 to WW189 who filed their respective affidavits Ex.WW1/A to Ex.WW189/A and relied on number of documents respectively filed by them and same will be considered and discussed later on. On the other hand, the Management of CGHS examined MW1 Dr.V.K. Dhiman, Nodal Officer of Monitoring Computerization & Training Cell who tendered his evidence by way of affidavit Ex. MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/14, whereas Management examined Shri Uma Kant Jaina but the Management of NICSI examined Shri Uma Kant Jaina, Deputy General Manager as MW2 who also tendered his evidence way of affidavit Ex.MW2/A and placed reliance on the documents Ex.MW2/1 to Ex.MW2/19.

9. I have heard Shri Rajiv Aggarwal, learned A/R for the claimants; Shri Paritosh Kumar, A/R for Management No.1; Shri Sanjeev Yadav, A/R for Management No.2 and Shri Ranjan Majumdar, A/R for Management No.3. I have also gone through the records carefully. My findings on the above issues are as follows.

Issue No.1 and 2 :-

10. Both these issues being co-related are taken up together as they can be conveniently disposed of by common discussion.

11. Case of the claimants is that in the year 2006 they had joined the services after undergoing the interview and technical test conducted by the officers of the CGHS and assisted by the Officers of NIC and NICSI and thereafter the workmen were selected & posted/transferred to different locations for which the transfer order were issued and acceded by the office of the CGHS. It is not in dispute that they are still working under the Management/s. A/R for the claimants submitted that the contract if any between CGHS and NICSI etc. is sham & bogus. The claimants are the direct employees of the CGHS but the Management/s by adopting unfair labour practice, are depriving the claimants their legitimate right of regularization and lawful dues in the regular pay scale.

12. Per contra, learned A/R appearing for the Management of CGHS strenuously argued that the claimants were not directly appointed by the Management herein and that control, transfer and management of claimants was in fact done by Management of NICSI. As such, there does not exist any relationship of employee & employer between the claimants and the Management No.1. It was argued that for completion of "Computerization project of its dispensaries and offices in 2006" techno-mangerial manpower was outsourced to NICSI and control, transfer and management of claimants/workmen herein was of Management of NICSI and not of CGHS. MOU was signed amongst CGHS, NICSI and NIC, terms of which provided that NIC was responsible for software development, training & operation support with the manpower to be provided by NICSI outsourced through NICSI. The computerization project was completed in three years but outsourced manpower through NICSI was required for another three years after 2009 for stabilization of the

project. On the other hand, it was argued on behalf of NICSI that Management of NICSI had neither appointed the workmen rather the workmen are the employees/workers of empanelled vendors viz. M/s E-Centric Solutions Pvt. Ltd. and M/s IAP Company Pvt. Ltd. which had supplied Data Entry Operators to CGHS and that CGHS availed the services of the workmen as Data Entry Operators to work in its dispensaries & office. He concluded that the Management of NICSI worked only as a facilitator between manpower provider/s viz. empanelled vendors and needy organization/CGHS. During the course of arguments, learned counsel appearing for the Management of NICSI heavily relied on the decisions of our own High Court in the case of **Anil Lamba & others Vs. Gov.t of NCT & others, 2017 III AD (Delhi) 572 and Anjani Kumar Singh Versus Ministry of Drinking Water & Sanitation and another** to buttress his submissions that contractual appointments do not confer any right on the appointees and they can not be treated to be the employees of principal employer.

13. There is no dispute about proposition of law that that if the contract is for supply of labour, necessarily the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor. Reference in this regard may also be made to a number of judgements viz. **Workman Vs. Coates of India Ltd. (2004) 3 SCC 547; Haldia Refinery Canteen Employees Union Vs. Indian Oil Corporation Ltd;(2005) SCC 51; Balwant Rai Saluja Vs. Air India Ltd (2014) 9 SCC 407; Ram Singh Vs. Union Territory, Chandigarh (2004) 1 SCC 126; Workman of Nilgiri Coop Marketing Society Vs. State of Tamilnadu (2004) 3 SCC 4514; Union of India and another Vs. Aryulmozhi Iniarasu and others (2011) 9 SCR 1.** It is also well settled that the control test and organization test are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court/Tribunal is required to consider several factors vis-a-vis- who is the appointing authority, who is a paymaster, who can dismiss; how long alternative service lasts, the extent & control of supervision; the nature of the job – professional or skilled work etc. etc, which would have a bearing on the result. **It would be worthwhile to first consider the evidence adduced on record by the parties to the dispute, especially because** Management No.1 CGHS has taken a plea that for completion of its "Computerization Project" and the manpower was outsourced through NICSI, whereas Management of NICSI has taken a plea that it served only a facilitator between the needy organization – CGHS and the empanelled vendors–manpower suppliers and had no role to enforce the service conditions or to pay remuneration/compensation to the workmen.

14. Testimony of the workmen/claimants who appeared in the witness box as WW1 to WW189 is in line with the averments made in the claim petition. Particulars of 267 Nos. of workmen/claimants in respect of whom the reference has been sent are given in Annexure and same is now exhibited as Ex.C-1. The claimants have testified in their testimony that no advertisement was issued in any newspaper excepting a notice was displayed on the notice board of Management (of CGHS). Though no letter of interview was issued by CGHS, however there were lot of candidates who appeared for the interview and there were large number of vacant posts of DEOs with the Management. While denying the suggestion that they were deployed under the MOU between CGHS,. NICSI and NIC, the claimants/workmen have deposed that after their selection by CGHS a list of selected candidates was displayed on the notice board of the management (of CGHS) with the direction to them for posting at various places. They also testified that their training was conducted by NIC but they were sent for training by CGHS. The claimants have filed on record number of documents viz. Ex. WW1/15 to Ex.WW1/19 are the relieving & joining letters of Shri Abdul Razaq – one of the claimants, addressed to Chief Medical Officer and duly forwarded by concerned Medical Officer of CGHS. Vide office order Ex.WW1/23 issued by Office of Addl.Director (North Zone) CGHS, 36 Nos. of workmen working as Data Entry Operators were transferred from one CGHS Dispensary to another CGHS Dispensary; Same is true about the documents Ex.WW1/28 to Ex.WW1/30; Ex.WW84/1 Ex.WW88/1 to Ex.WW88/10; Ex.WW90/6 Ex.WW121/1; Ex.WW122/1; Ex.WW126/1; Ex.WW151/1 whereby transfer/posting of certain workers working as Data Entry Operators was made by the Office of Addl.Director, CGHS (South Zone). The claimants have also filed on record number of other documents showing that transfer/posting of the workmen working as Data Entry Operators used to be done by the Management of CGHS. Ex.WW1/31 to Ex.WW1/39; Ex.WW168/1; Ex.WW168/2 are the orders of relieving and joining letters of the workmen Abhishek Kumar Kushwaha, Deepa Kannaujiya, Prmod Singh Rawat, Saurabh Khushwaha, Kamaljeet Kumar, duly issued & forwarded by concerned CMO of CGHS Wellness Centre. Same is true in respect of Ex.WW83/2; Ex.WW83/3; Ex.WW158/1 2; Ex.WW159/2; Ex.WW167/2 issued in respect of other workers by the Medical Officers of CGHS. Document Ex.WW1/40 is the copy of letter dated 14/5/2010 which Dr.G.N. Pounikar, Addl., Director of CGHS Nagpur had addressed to DIO, NIC, Nagpur for retention of 17 Nos. of DEOs for CGHS Nagpur from 1/4/2010 onwards. Documents Ex.WW1/41 to Ex.WW1/49 are the extracts/copies of Attendance Register maintained at Timarpur Dispensary of CGHS and performance certificate issued by CMO of CGHS Dispensary at Laxmi Nagar, Delhi. Ex.WW1/51 and Ex.WW1/52 are the performance-cum-experience certificates issued to DEO Abdul Razaq and Kamal Jeet Kumar respectively by Dr.Jagdish Ghosh of CGHS Wellness Centre, Kingsway Camp, Delhi and Dr. Nikhilesh Chandra, SAG of CGHS, Allahabad. Same is true about documents Ex.WW97/1Ex.WW99/2, Ex.WW100/1, Ex.WW107/1; Ex.WW108/4; Ex.WW129/1 Ex.WW130/1; Ex.WW132/1 & 2; Ex.WW138/1; Ex.WW142/1; Ex.WW152/1; Ex.WW155/1 & 2; Ex.WW163/1; Ex.WW168/3 Ex.WW177/2; issued in favour of other workmen /claimants by the concerned Medical Officers of CGHS. Identity cards Ex.WW1/62 and Ex.WW1/63 were also issued

to the workmen concerned duly signed by the officers of CGHS alongwith official seal. Office order Ex.WW1/2 was also issued by the Management of CGHS, stating thast there would be no further recruitment of Data Entry Operators from 31/3/2014. Document Ex.WW1/5 is the copy of letter dated 29/4/2014 addressed by Addl. Director, CGHS, Jaipur to the Deputy Director (Admn.), Directorate of CGHS, New Delhi regarding approval for engagement of Group-C on outsource basis against vacant posts of LDC and services of DEOs to be discontinued. There are number of other documents filed on record from the side of claimants/workmen about the work-experience/character certificate issued to them by the Medical Officers of CGHS. All these documents prima facie show that the claimants have been working in the dispensaries/offices of CGHS and control & supervision over their work was that of Management of CGHS.

15. According to the testimony /affidavit Ex.MW 1/A of Shri V.K. Dhiman, for completion of the pilot project "Computerization of CGHS dispensaries & its offices in Delhi and outside" techno managerial manpower was outsourced to NICSI and that in fact there is no sanctioned post of Data Entry Operators with the Management of CGHS. He has filed on record copy of Project plan and its budget estimate for hiring the manpower as Ex.MW1/1; copy of communication from NIC and OM as Ex.MW1/2; copy of approval of Standing Finance Committee as MW1/3; copy of noting of Integrated Finance Division of the Ministry regarding continuation of DEOs as Ex.MW1/4; copy of Office Order dated 27/6/2014 (Ex.MW1/5) regarding discontinuation of services of DEOs after 30/6/2014; copy of order (Ex.MW1/6) regarding retention of DEOs for one more month till 31/7/2014; Report of High Level Committee of Hon'ble High Court as Ex.MW1/7; copy of the tripartite MOU and its addendum executed amongst CGHS, NICSI and NIC as Ex.MW1/8; copy of NICSI tender document as Ex.MW1/8; proforma invoice by NICSI as Ex. MW1/10 and copy of the work order issued by NICSI to the vendor/s as Ex.MW1/11; copy of the appointment/extension letter issued to the workman as Ex.MW1/2 and copy of payment details made to empanelled vendors of NICSI as Ex.MW1/3. On the strength of these documents, learned A/R appearing for the Management of CGHS strenuously argued that the claimants/workmen were never appointed/recruited by the Management of CGHS, rather they were the engaged by the empanelled vendors of NICSI. In nut-shell, the stand of the Management of CGHS is that the workmen are the contractual workers.

16. MW1 has admitted in his cross examination that the Management never obtained any licence under Section 7 of CLRA Act. This witness failed to point out any document filed on record to show that the claimants were directly appointed by the Contractor/empanelled vendor. **He admitted that 10 claimants were terminated by the Management in Kanpur (UP) but were reinstated after 15 days of their termination vide Ex.WW40/1. He also admitted that from time to time memos were issued to the claimants by the Management**. He **further admitted that Chief Medical Officer/s supervised the work and performance of the claimants. The claimants moved applications for leave to the concerned CMO who granted/declined the same. He also admitted that CMO is the disciplinary authority in regard to claimants. Concerned workmen were/are working continuously and uninterruptedly till date excepting those worker who voluntarily left. He also admitted that by & large the work & conduct of the workmen is satisfactory except in a few cases. He admitted that the claimants herein are fulfilling the essential qualifications. He admitted that the work of Data Entry Operators is regular in nature. Though he failed to reply as to how many contractors were changed from 2006 till 2014, he explained that since 2014 till date about three contractors were changed but the workmen remained the same.** He admitted that Ex.MW1/W-7 was issued by the Management about the importance of Data Entry Operators and Operation Managers. He also admitted that ID cards, transfer orders, work experience letters, User ID and password, participation certificates in CGHS programme and seminars were issued to the claimants by the Officers of CGHS. He showed his ignorance if 445 posts of LDCs were lying vacant during the period from 2006 to 28/4/2015. He admitted that as per document Ex.MW1/11, posts of Data Entry Operator and Technical Manager are termed to be "technical manpower". He conceded that MOU Ex.MW1/8 (signed/executed in 2008) expired in 2010. He had no material or document to show that any MOU was signed from 2010 to 2014. He also admitted that MOU Ex.MW1/8 does not mention that NICSI will provide Data Entry Operators and Operation Managers to CGHS.

17. MW2 –Uma Kant Jena has filed on record copy of the work order dated 1/1/2014 issued in favour of M/s E Centric Solutions Pvt. Ltd. and M/s AIP Company Pvt. Ltd. as Ex.MW2/2 and Ex.MW2/3 alongwith copy of the invoice dated 20/1/2014 and 15/1/2014 (Ex.MW2/4 and Ex.MW2/5) respectively issued to the aforesaid companies/empenalled vendors. He also filed on record copies of addendum to the MOU signed amongst the Co-Managements herein as Ex.MW2/8 to Ex.MW2/11, perusal of which shows that validity of MOU amongst them was extended in the year 2014 from time to time, till 31/12/2014. This witness while deposing that in the year 2006 there was no MOU amongst the co-management/s, has admitted that the claimants were engaged in the year 2006 and 2007. He clarified that during the period from 2006 till date about 12 vendors/contractors have been changed from time to time but the Management never tried to ascertain the fact that vendors were changing from time to time, but the workers remained the same. According to him, there is nothing on record to show as to when the workmen/claimants were engaged by the vendor concerned or as to when their services were terminated by any of the vendors. He **admitted that officials of Management of CGHS were exercising supervisory control over the claimants and same is his reply in regard to ID card, appreciation letters, joining & relieving, work-experience letter, User ID and password etc.** (issued to the

claimants). **He also admitted that CGHS was appointing, terminating, transferring, issuing appreciation letters etc. to the claimants. He further admitted that the claimants were working under the supervision and control of CGHS.** He clarified that their Management (NICSI) neither appointed nor terminated nor initiated disciplinary proceedings, nor issued ID cards/experience letters/User ID & password/s to the claimants.

18. As per deposition of WW1 to WW187 coupled with the documents as referred to in foregoing paras as also the testimony of MW1 & MW2 as discussed in para 16 & 17 above, **it stands proved on record that the claimants have been working since 2006 under the direct control and supervision of the Management of CGHS and there has been no control or supervision over their work by NICSI or so called contractors/empanelled vendors of NICSI**. MOU Ex.MW1/8 (tripartite agreement amongst co –Managements was executed only on 3rd/4th December, 2008, whereas the claimants have been working in the dispensaries/offices of CGHS from 2006 onwards. Even if it is assumed for the sake of arguments that the Management of CGHS used to get work done from the claimants/workmen through empanelled vendors of NICSI, pursuant to tripartite MOU Ex.MW1/8, in that eventuality also the question arises for consideration is whether the said contract is a sham or camouflage as alleged by the claimants.

19. It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of the provisions of Act punishable there-under. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

20. Constitution Bench of Hon'ble Supreme Court in the celebrated case of **Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1** noticed the following circumstances under which contract labour would be held to be the workmen of the principal employer :-

"107. An analysis of the cases, discussed above, shows that they fall in three classes :

(i) Where contract labour is engaged in or in connection with the work of an establishment establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract or because the appropriate Govt. issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.

(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.

(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer.

21. In the case of Management of **Ashok Hotel Vs. the Workmen (W.P. –Civil No.14828/2006 – decided on 19/2/2013)**, similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

22. Except for the bald statement that the claimants are/were the workers of the contactors/empanelled vendors of NICSI, the Management of CGHS or NICSI has not filed on record any document to rebut the contention of the claimants that they were engaged by the Management and that is why the claimants who were engaged during the years 2006 are still working as such. It is matter of record that an application under Section 11-3(B) of the Act read with Rule 15 of the ID (Central) Rules, 1957 was moved on behalf of the claimants, praying that Management be directed to produce following documents viz.:-

(i) Details of the engagement of the vendors for the work of t he workmen alongwith the agreements, work orders and tenure of the said vendors

(ii) Provide the time period when there was no vendor since the initial appointment of the workmen.

(iii) Labour licence issued by the Labour Department in favour of the Management.

(iv) Details of amount sanctioned by CGHS for the salary of the DEOs and Operation Managers alongwith file notings, etc. etc….

Although on 8/7/2019 learned A/R appearing for the Management of CGHS in all fairness had stated that the Management would place on record as far as possible all the documents sought for by the workmen for proper appreciation of the controversy, however the Management of CGHS failed to produce the same for the reasons best known to it. It is notable that although the Management of NICSI has filed on record copies of the work order dated 1/1/2014 and copy of the invoice dated 20/1/2014 (Ex.MW2/2 and Ex.MW2/4) issued in favour of M/s E Centric Solutions Pvt. Ltd. as well as copy of work order dated 1/1/2014 (Ex.MW2/3) & copy of invoice dated 15/1/2014 (Ex.MW2/5) issued in favour of M/s AIP Company Pvt. Ltd., h**owever,** the Management of **CGHS or NICSI** has not filed on record copy of any of the agreements/ contracts awarded to contractor/s/ empanelled vendors from 2006 onwards, so as to ascertain as to whether such contract was either for completion of any project or solely for supply of manpower. Similarly, the Management No.3 NICSI has also not filed on record copies of the work order or invoice which were allegedly issued in favour of empanelled vendors during the period from 2008 to to 2013. It is also worthwhile to mention here that MW1 has conceded that Management of CGHS never obtained any licence under Section 7 of CLRA Act. MOU Ex.MW1/8–tripartite agreement amongst the Managements herein was executed on 3rd/4th December, 2008, whereas the workers/claimants have been working since 2006 in the dispensaries/offices of CGHS at Delhi and outside. Had the claimants/workmen been the employees of the so-called contractors/empanelled vendors of NICSI, overall control & supervision qua their work, duties and transfer/posting would have been done at the end of those contractors/empanelled vendors and not that of CGHS. It has also come on record that during the period from 2006 till date, about 12 vendors/contractors have been changed from time to time **but the workers remained the same**. All these circumstances lead me to draw an inference against the Managements that the contract/agreement issued by the Management of CGHS or in turn by NICSI with the so called contractor/ empanelled vendors for availing the services of the claimants herein in the dispensaries/office of CGHS, was sham and camouflage. It is fairly settled that once the contract/agreement between the Managements and the so-called contractor is found to be a sham and camouflage, in that eventuality the contract labour working in the establishment of the principal employer, are held to be the employees of the principal employer himself. To my mind, the authorities cited by the Management of NICSI are distinguishable and not applicable to the facts of this case.

23. Having regard to the overall facts and circumstances of the case as discussed hereinabove, this Tribunal has no hesitation to hold that the instant claim is maintainable and that the claimants are the employees of the Management of CGHS (principal employer) and there existed relationship of employer-employees between the Management of CGHS and the claimants/workmen herein.

24. Now, an important question/issue arises for consideration is as to whether the workmen/claimants who are working with the Management are entitled to be regularized to the post/s to which they are working. It is fairly settled that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

26. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

27- Our own High Court in the case of **Project Director, Department of Rural Development Versus its Workmen through D.P.V.V.I.E.Union (W.P. –Civil No. 17555/2005 – decided on 29/3/2019)** after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and other Vs Uma Devi, 2006 (4) SCC 1** and of Delhi High Court in the case of **Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018**, has observed in para 27 and 29 as under :-

27. "In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and can neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of the present case. **Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."**

…….

29. Thus, in the light of the observations of the Supreme Court in Ajaypal Singh (supra), ONGC (supra) and Umrala Gram Panchayat (supra) as also of this Court in Ram Singh (supra), I find that the petitioner's reliance on the decision of the Supreme Court in Uma Devi (supra) and of this Court in Anil Lamba (supra) is wholly misconceived. **In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order, directing the petitioner to regularize the respondents' services……"**

From the above rulings, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & unless **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other. However, the Industrial Tribunal is vested with powers to curb unfair labour practices being adopted by the employer/s.**

28. It is evident that most of the claimants/workmen have been working with the Management continuously and uninterruptedly since 2006, as Data Entry Operator/s and/or Operation Manager, nature of which is considered to be perennial. It is also evident from the testimony of MW1 and MW2 that in February, 2018 Management of CGHS used to sanction Rs.25508/- per Data Entry Operator inclusive of GST of 18% and vendor was charging about 10 to 15% out of the same and then remaining amount was paid to the workmen. This clearly goes to show that the Management of CGHS has deprived the workmen the status & privilege of permanent/regular employee, as the workmen working as Data Entry Operator – a technical post – are getting lesser than the wages/salary of a clerk/Lower Division Clerk in any govt. organization. Employing workmen as "badlis", casuals or temporaries and to continue them as such for years together with the object of depriving them of the status & privileges of permanent workman **amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act. I**t emerges that the Management has adopted unfair labour practice in depriving the workmen/claimants herein of the status & benefit of permanent workman and such a practice is required to be curbed.

29. It has come on record that the workmen/claimants herein have been working as Data Entry Operators/Operation Manager continuously and uninterruptedly since 2006-07 though described them as contractual employees but are not being paid wages as per pay-scale for their respective categories rather they are paid wages less than that being paid to their regular counter-parts. Once the workmen/claimants are doing same duties and responsibilities as are being performed by regular employees of the Management, **they are entitled to get wages at par with those of regular employees, on the principle of "Equal Pay for Equal Work".**

30. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"**The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like).** It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out

of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.''

31. In view of the rulings and facts of the case as discussed hereinabove, it is held that the claimants shall be deemed to be employees of the Management of CGHS and they shall be entitled to get wages according to pay-scale of their respective categories/designation i.e.Date Entry Operators/LDCs, and Operation Manager concerned, with all consequential benefits. from the date of their initial engagement/appointment,.

32. As regards regularization of services of the workmen/claimant, it is worthwhile to mention here that MW2 Uma Kant Jena has conceded in his testimony that the claimants/workmen fulfill the essential qualifications for being engaged as Data Entry Operator/Operation Manager. He also admitted that a large number of post of LDCs are lying vacant in CGHS but he could not tell the exact number. Thus it is evident that the claimants/workmen are entitled for the post/s of DEA/LDCs and/or Operation Manager, on which the workmen concerned are rendering services in CGHS dispensaries/offices. Since the workmen/claimants are working under the Management since 2006, this Tribunal considers it expedient in the interest of justice to direct the Management of CGHS to issue orders regarding regularization of the claimants/workmen from the date of their initial engagement, within a period of three months from the date of publication of the Award.

Award is passed accordingly in favour of the claimants and against the Management. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 23.8.2019

AVTAR CHAND DOGRA**,** Presiding Officer

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1703.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कुलपति, दिल्ली विश्वविद्यालय, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 139/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.09.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. **1703**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 139/2016) of the Central Government Industrial Tribunal-cum-Labour Court-1 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice Chancellor, University of Delhi, Delhi & Others, and their workmen which were received by the Central Government on 04.09.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 139 of 2016

Shri Anil Yadav s/o. Shri Satyanarayan
r/o. 2470, Gali No.65, Sant Nagar, Burari,
Delhi 110084. …Workman

Versus

1. M/s. Ambedkar Ganguli Student House for Women,
University of Delhi, Hostel Complex,
Banda Bahadur Marg, Dhaka,
Delhi 110009.

2. The Vice Chancellor,
University of Delhi,
Delhi 110007. …Management

AWARD

This is a claim filed directly by the Workman/claimant Anil Yadav under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that workman was working as Caretaker with the Management No.1 continuously w.e.f. 21/8/2013 on the basis of appointment letter dated 16/8/2013 issued by Management No.2. It is pleaded that at the time of appointment of the workman, the Management no.2 had obtained his signatures on some blank papers on the pretext of completing formalities of ESIC and PF etc. to which the workman being unemployed had not raised any objection. After completion of 240 days continuous service, the workman started raising his legal and justified demand to regularize him and to pay him bonus and equal pay at par with permanent employees but the Management/s were not happy with the same and later on the workman filed complaints against the Management in the office of Chief Deputy Labour Commissioner, New Delhi. Thereafter the Management started harassing and victimizing the workman by leveling false and fabricated allegations through notices to which the workman gave his reply. His last drawn wages were Rs.15,800/- per month. It is also pleaded on 31/12/2015 when the workman had reported for duty, the Management No.1 refused to take him duty without any reason and without issuing any chargesheet/notice or without6 offering him any compensation/notice pay. . Thereafter he got sent a demand notice dated 13/1/2016 to the Management/s but to no response. Then he approached the Conciliation Officer but to no avail. The workman has prayed for reinstatement with continuity of service and full back wages

2. The claim petition has been resisted by the Management who filed its written statement and took preliminary objections that the workman/claimant was appointed as a caretaker under contractual employment vide appointment letter dated 30/6/2015 and as per terms of the said contract, his employment ended on 30/12/2015 and as such the claim is not maintainable. It is alleged that the workman has been found to be negligent and non serious towards his duty and was issued several warnings/memos dated 20/7/2015 and 9-10-2015 on account of de-reliction of duty and his behavior was of unbecoming of a caretaker in a women's hostel, as while on duty he was getting "drink" and was picking up fights with service providers on annual hostel event which was attended to by distinguished guests. As such Managing Committee of the Management No.1 had decided in the interest of hostel not to renew his contract. It is alleged that the workman/claimant being a contractual employee was well aware about the terms of contract of his employment and all the complaints have been filed by the workman after 30/12/2015 i.e. the day his contract of employment expired. Prayer has been made for dismissal of the claim petition.

3. The claimant/workman filed rejoinder wherein she denied all the allegations made by the Management and reiterated her own case as set up in the claim petition.

4) On the pleadings of the parties, following issues were framed on 9/3/2017 :-

1) Whether management No.1 has refused to take the claimant on duty on 31/12/2015 as alleged ?

2) Whether the claimant is entitled for arrears and continuity of service with full back wages as alleged ?

3) Relief.

5) The Claimant in support of his case examined himself as W.W.1 and tendered her affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/4.

6) On the other hand, the Management in order to rebut the case of the claimant examined Dr.K. Ratnabali, Assistant Profesor/Warden of Hostel Complex of Management No.1, as MW1 who tendered her evidence by way of affidavit Ex.MW1/A alongwith documents Ex.MW1/1 to Ex.MW1/5. Management also examined one Shri Kaushik who was working as Cook in the Canteen of Management No.1, as MW2 who also tendered his evidence by way of affidavit Ex.MW2/A..

7) I have heard Shri Suraj Pal Singh A/R for the claimant/workman and Shri G.K. Pathak, A/R for the Management and have gone through the records carefully. My findings on the above issues are as follows.

Issue No.1 and 2 :-

8) Both these issues being inter related are being taken up together for the purpose of discussion and they can be conveniently disposed of.

9) It is manifest from the pleadings of the parties and evidence adduced on record that the workman/claimant was appointed by the Management for the post of Caretaker, initially vide appointment letter Ex.WW1/1 (dated 16/17th August, 2013) on a consolidated salary of Rs.13200/- for the period from 21/8/2013 to 30/12/2013 and he continuously worked with the Management. However, in the year 2015 another appointment letter dated 30/6/2015 (Ex.MW1/1) was

issued regarding his appointment for the period from 1/7/2015 to 30/12/2015 on a consolidated salary of Rs.15800/- per month. Copy of the joining report of the workman is Ex.MW1/2 (dated 1/7/2015) and copy of the affidavit/undertaking (Ex.MW1/3) furnished by the claimant inter alia to the effect that his engagement as Caretaker is from 1/7/2015 to 30/12/2015 and he shall perform such duties as may be assigned to him; that University without assigning any reason can terminate his service at any time and further that he will have no claim with the University of Delhi for regularization of service. Thus, relationship of employee and employer between the workman and Management stands established, as he continuously worked with the Management from 21/8/2013 till 31/12/2015, when his services were discontinued/terminated and **the claimant falls within the definition of workman as provided under Section 2(S) of the Act**. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

10) During the course of arguments, learned A/R appearing for the Management strenuously argued that employment of the workman/claimant was on contract basis and in terms of appointment letter Ex.MW1/1 , it came to an end on 31/12/2015. Even otherwise conduct and performance of the workman was not satisfactory and that is why for dereliction of duties, he was served with memos Ex.MW1/4 and Ex.MW1/5. It was contended that services of the claimant automatically came to an end after the expiry of period of contract on 31/12/2015. As such, case of the claimant, in the submission of the management, is covered by provisions of section 2(oo)(bb) of the Act. Reliance was placed on the judgement of Hon'ble Supreme Court in the case of **Municipal Council Samrala Versus Raj Kumar, 2006(3) SCC 81.**

11. Per contra, learned A/R for the claimant submitted that services of the claimant were illegally terminated by the Management inasmuch as he was not allowed to join duty on 28/12/2015, without any notice or without any notice/charge sheet or without offering him any notice pay/compensation and as such the said termination is in violation of the provisions of Section 25-F of the Act.

12. Before I proceed to consider the comparative merits of the submissions, it is necessary to refer to the definition of 'retrenchment' as contained in Section 2(oo) and the same is as under:

> 1*[(oo) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> 2*[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
>
> (b) termination of the service of a workman on the ground of continued ill-health;

13. In the case of **Municipal Corporation Samrala (supra)**, relevant facts of the case were that the workman was engaged as clerk on contract basis with Municipal Corporation Samrala against a monthly salary of Rs.1000.00 per month in June 1994 and it was mentioned that his services would be availed till it is considered fit, proper and necessary. The workman worked for different spells and later on his services were terminated vide office order M5. His main contention was that he has worked for more than 240 days in a calendar year. As such, Labour Court in its award held that termination was in violation of provisions of section 25-F of the Act and directed reinstatement with 25% back wages. The award was upheld by the Hon'ble High Court and it was finally taken in appeal by the management. Hon'ble Apex Court while interpreting provisions of section 2(oo)(bb) of the Act observed that clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of non-renewal of the contract of employment or on its expiry, whereas the second part postulates termination of

such contract of employees in terms of stipulation contained in that behalf. The learned Presiding Officer of the labour Court as also the High Court arrived at their respective findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the respondent came to be appointed were noticed by their lordships and it was held that :-

> "It is clear from critical examination of the above definition that in case contract comes to an end due to non-renewal after completion of contract of employment, same would not amount to retrenchment and would be covered by explanation contained in section (bb) as above.".

13. From the pleadings of the parties and evidence adduced on record in the instant case, it is evident that the workman/claimant was initially appointed as Caretaker by the Management vide appointment letter Ex.WW1/1, the term of which was from 21/8/2013 to 30/12/2013. Testimony of the workman/claimant that he continuously worked with the Management from 21/8/2013 till the date of his termination on 31/12/2015 has gone unchallenged and unassailed. Even MW1 DlK. Ratnabali, has admitted in her testimony that prior to issuance of appointment letter dated 30/6/2015 (Ex.MW1/1), the workman was also on contractual employment. According to her, when she had joined as Warden with the Management on 1/10/2014, the workman was already working. Thus, it stands proved that the workman continued to work with the Management from 21/8/2013 to 30/12/2015. As discussed above, initial period of contract of the workman, as is evident from the letter of appointment Ex.WW1/1, was only upto 30/12/2013 but he continued to work even therafter. Fresh appointment letter Ex.MW1/1 (dated 30/6/2015) was issued, whereby the claimant was again appointed as a Caretaker on contract basis on consolidated salary of Rs.15800/- per month for the period from 1/7/2015 to 30/12/2015. It would be worthwhile to mention here that post of Caretaker in the Hostel Complex of the Management is of permanent and perennial nature. Despite that, the Management continued to appoint the claimant/workman on contractual basis and period of contract was extended from time to time, just to deprive the workman of the status and privileges of permanent post. Employing workmen as "badlis", casuals or temporaries and to continue them as such for years together with the object of depriving him of the status & privileges of permanent workman **amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act. I**t emerges that the Management has adopted unfair labour practice in depriving the workman/claimant herein of the status & benefit of permanent workman and such a practice is required to be curbed. In the facts and circumstances of the present case, it would be inappropriate and unfair to hold that contractual employment of the workman came to an end on 30/12/2015 due to non-renewal, after completion of contract of employment or that it was not a case of retrenchment and would be covered by explanation contained in Section 2(oo)(bb) of the Act.

14- It is apparent from the evidence adduced on record that no notice or notice was given to the claimant/workman prior to his retrenchment/termination on 30/12/2015. It was contended on behalf of the Management that the work and conduct of the workman/claimant was not satisfactory and two memos dated 20/7/2015 (Ex.MW1/4) and dated 9/10/20p15 (Ex.MW1/5) were served upon the workman/claimant, for dereliction of duty. As per memo Ex.MW1/5, on 18/7/2015 a male labourer was left on his own to do the repair work in the hostel without any supervision even though the workman/caretaker was well aware of the fact that there were about 10 to 12 girl residents residing in the Hostel and it was a case of negligence on the part of the claimant. Vide second memo Ex.MW1/5, the Management had shown its displeasure regarding lack of pro-activeness on his part relating to repair & periodic maintenance of Kent RO system provided in the Hostel. Be that as it may, the Management has admittedly not issued any notice to the claimant before ordering her termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act, despite the fact that he worked with the Management continuously from 21/8/2013 till 30/12/2015. It would not be out of place to mention here that Section 25-F of the Act also clearly provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month' s notice in writing indicating the reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of the notice. Provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under:-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –
>
> (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
>
> (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

15- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

16- Since there is no evidence on record that in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f. 31/12/2015 is held to be illegal and void.

17- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management from 21/8/2013 to 30/12/2015. His last drawn wages/salary were to the Rs.15,800/- per month. Services of the claimant were illegally terminated w.e.f. 31/12/2015. Though the workman/claimant has prayed for reinstatement into service with full back wages, however he has neither pleaded nor has adduced any evidence to show that he is not gainfully employed since after his termination. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has observed as under :

> "The propositions which can be culled out from the aforementioned judgments are :
>
> i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages.** If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

18- Since the claimant has neither pleaded nor has adduced any evidence to show that he is not gainfully employed since after his termination, to my mind he is not entitled for reinstatement into service. Furthermore, latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> " Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

19. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.2,00,000/- (Rupees Two Lakhs only) appears to be just and reasonable, and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum till realization of the amount. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 27.8.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1704.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स विश्वसनीय आपूर्ति सिंडिकेट, कोलकाता, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 59/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.09.19 को प्राप्त हुए थे ।

[सं. एल-40012/28/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. **1704**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2014) of the Central Government Industrial Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Reliable Supply Syndicate , Kolkata & Others, and their workmen which were received by the Central Government on 03.09.19.

[No. L-40012/28/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 59 of 2014

Parties: Employers in relation to the management of M/s. Reliable Supply Syndicate

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. S. K. Karmakar, learned counsel for BSNL
		Mr. A.K. Poddar, learned counsel for M/s. Reliable Supply Syndicate.
On behalf of the Workmen	:	None

Dated: 26th August, 2019 Industry: Telephone.

AWARD

By Order No.L-40012/28/2014-IR(DU) dated 05.08.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"1. Whether the action of the management of M/s. Reliable Supply Syndicate, contractor of BSNL by suspending from the service of Shri Tapan Manna, workman without allowing suspension allowance is justified or not? If not, what relief the workmen are entitled for? 2. Whether the action of the management M/s. Reliable Supply Syndicate by termination of the service and not allowing Shri Tapan Manna to join in his previous job even after his acquittal under section 235(1) of Cr.PC and found not guilty u/s 498A/306/34 of IPC by Hon'ble Court is justified or not? If not, what relief the workman is entitled for?"

2. When the case was taken up for hearing today, none appeared for the workman. It transpires from record that this reference is pending in this Tribunal since 21.08.2014 and the parties entered appearance through their respective learned counsel and the union filed its statement of claim and the management also filed its written statement, but inspite of all the opportunities, the workman has not filed his rejoinder nor he has adduced any evidence in support of his claim as made in the statement of claim. Union is found absent since 12.06.2017, i.e., on nine consecutive dates. Learned counsels for both the managements have also submitted that since the workman has not adduced any evidence in support of his statement of claim, they have nothing to answer by adducing evidence.

3. On consideration of the facts and circumstances of the case, it appears that the workman has no grievance at present in respect of his suspension or termination as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 26th August, 2019

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1705.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रजिस्ट्रार, बाबासाहेब भीमराव अम्बेडकर विश्वविद्यालय (सी) लखनऊ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 26/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.08.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. **1705**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2011) of the Central Government Industrial Tribunal cum-Labour Court CGIT- Lucknow as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Babasaheb Bhimrao Ambedkar University(C) Lucknow & Others, and their workmen which were received by the Central Government on 30.08.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR**,** PRESIDING OFFICER

I.D. No. 26/2011

BETWEEN :

Sri Anand Kumar S/o Sri Gaya Prasad & three others.
C/o Sri Parvez Alam, Labour Law Advisor
R/o 283/63 Kha, Garhi Kanora (Premwati Nagar)
PO Manak Nagar, Distt. Lucknow-2

AND

1. The Registrar,
Babasaheb Bhimrao Ambedkar University(C)
Vidhya Vihar,Raebareli Road,
Lucknow-226025

2. Sri Samir Kumar Dixit
Garden Inspector
Babasaheb Bhimrao Ambedkar University (C)
Vidhya Vihar, Raebareli Road,
Lucknow-226025

AWARD

1. The present petition has been filed by the workmen, Anand Kumar & others under section 2A of the Industrial Disputes Act, 1947, against alleged termination of their services by the opposite party management. The matter has been adjudicated vide award dated 30.09.2016, which was set aside by the Hon'ble High Court, Lucknow Bench vide order dated 01.05.2019 in W.P. No. 26752 (MS) of 2017 with direction to pass fresh award in accordance with law, without considering the previous award dated 30.09.2016. Accordingly, the parties were called upon in compliance of the order dated 01.05.2019 of the Hon'ble High Court reviving the case on its original number.

2. The case of the workmen Anand Kumar and Suresh Kumar Kanaujia, in brief, is that they were appointed as Gardner under the subordination of the opposite party on 03.03.08, Sri Ram Karan was appointed on 3.09.07 as Gardner whereas Sri Rajesh Kumar Sonkar was appointed on 02.01.2006 as Security Guard and all the workmen had worked continuously for more than 240 days. It has further been stated in the claim statement that the opposite party did not pay full wages rather it used to pay less sum and when workmen asked for full wages the opposite party got annoyed and terminated their services orally on 30.01.2010 without giving any notice, nor any notice pay in lieu thereof. It was gross violation of Section 25F of the I.D. Act.

3. The applicants have emphasized that several other workmen junior to the applicants have been retained and opposite party has engaged some new faces also after their termination which is clear violation of Section 25 G and Section25H of the I.D. Act. With the aforesaid pleadings the petitioners have prayed for declaration of the aforesaid termination as illegal and relief for their reinstatement with consequential benefits including back wages etc. have also been sought.

4. The management has filed written statement M-5 wherein the allegations of the claim statement have been denied. The management has pleaded that the workmen are not covered under the definition of "workman" under Section 2(s), and more over the opposite party is not an industry as defined under Section 2(j) of the I.D. Act. The management has referred to the pronouncement of Hon'ble Supreme Court in AIR 1963, SC 1873.

5. The opposite party has clearly denied the appointment of the workmen at any point of time, but it has been mentioned in the written statement that the workmen were engaged through an agency viz Good Housing Keeping, to carry out the sewage and cleaning work, no payment was ever made to the petitioners by the Institution directly, the agency was paid by the University and thereafter it used to make payment to the workmen. The management has requested to reject the claim statement with heavy cost. Several annexures have been enclosed along with the written statement. The petitioners while denying the main facts mentioned by the opposite party, have filed rejoinder W-6 wherein the pleas taken in the claim statement have been reiterated. Certain documents have been annexed alongwith rejoinder.

6. The workmen have filed affidavit of Sri Anand Kumar as W-7, W-8 of Sri Suresh Kumar Kannojia, W-9 of Sri Ram Karan Yadav and W-10 of Sri Rajesh Kumar in evidence. The management has filed affidavit of Dr. Victor Babu, Registrar and Dr. Samir Dixit, Horticulture Inspector of the university. The parties cross-examined witnesses of each other.

7. The parties availed opportunity to argue their respective case. The management filed written submissions also. Both the parties have been heard thoroughly at length and record has been scanned minutely.

8. The learned authorized representative of the workman has submitted that the management appointed Anand Kumanr & Suresh Kumar Kanojia on 03.03.2008 as Gardner, Ram Karan Yadav on 03.09.2007 as Gardner and Rajesh Kumar Sonkar on 02.01.2006 as security guard and worked for more than 240 days but their services have been terminated without any notice or notice pay of retrenchment compensation in violation to the provisions of section 2 (oo), 25 F of the Industrial Disputes Act, 1947. Further, the learned counsel has also submitted that the management appointed new workmen in violation to provisions u/s 25 G & H of the Industrial Disputes Act, 1947. The learned counsel has also submitted that the University neither possess registration as principal employer nor it has filed any license in respect of alleged agency; accordingly, the workmen be treated as employees of the principal employer. He has relied upon:

(i) Sonepat Co-operative Sugar Mills Ltd. vs Rakesh Kumanr [2006 (108) FLR 592] Hon'ble Supreme Court.

(ii) Krishna Bahadur vs M/s Purna Theatre & others [2004 (103) FLR 146] Hon'ble Supreme Court.

(iii) Secretary, Haryana State Electricity Board vs Suresh & otehres [1999 (81) FLR 1016] Hon'ble Supreme Court.

(iv) Kurkshetra University vs Prithvi Singh 2018 LLR 371 Hon'ble Supreme Court.

(v) Director, Fisheries Terminal Division vs Bhikhubhai Meghajibhai Chavda [2009 (123) FLR 875] Hon'ble Supreme Court.

(vi) AIR 1978 Supreme Court 548 Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others Hon'ble Supreme Court.

9. Per contra, the learned authorized representative of the management has submitted that the workmen under dispute were never appointed by the management instead they were being engaged through an agency viz. Good House Keeping and attendance of the workmen were taken by the said agency, which used to submit the bill for payment before the management. He has also submitted that the engagement of the workman was through the agency in pursuance to the tender notice, followed by a contract between the agency and the management. He has relied upon:

(i) G.M. (Osd) Bengal Nagpur Cotton vs. Bharatlal & Anr. decided on 14.12.2010 Hon'ble Supreme Court.

(ii) International Airport Authority of India vs. International Air Cargo Workers Union [2009 (13) SCC 374] Hon'ble Supreme Court.

(iii) Municipal Corporation of Greater Mumbai vs. K.V. Shramik Sangh & Ors. AIR 2002 SC 1815 Hon'ble Supreme Court.

10. The management has pleaded that the applicants are not 'workman' u/s 2(s) of the Act which has been strongly opposed by the applicant. The definition of 'workman' as provided in section 2 (s) of the Act reads as under:

2. "(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) ***…….***

(ii) ***…….***

(iii) ***……***

(iv) ***Who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."***

From perusal of the rival pleadings of the parties, particularly Para 4 of the affidavit of Dr. Victor Babu, Registrar, it is apparent on the face of record that the applicants viz. Anand Kumar, Suresh Kumar & Ram Karan Yadav had been engaged for gardening purposes; whereas Rajesh Kumar Sonkar was engaged for security work. Thus, it is clear that that the applicants were not employed in supervisory capacity hence; fall within the definition of 'workman' as provided in the Section 2 (s) of the Act.

11. Further, the management of University has also come up with a case that it is not covered within the meaning of 'industry' under Section 2 (j) of the Act. In this regard the workmen have relied on verdict of Hon'ble Apex Court in *AIR 1978 Supreme Court 548 Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others* case; wherein it has been observed that

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

It is well known that the Universities across the country are indulged in the work of imparting education and it charges the fee for the same and is not indulged in sovereign function at all; rather it is at par with other educational institutions. Also, it has indicated that the nature of work carried out by the Babasaheb Bhimrao University well qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that Babasaheb Bhimrao University, is an industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

12. The management of the Ambedkar University has also pleaded that the workmen had been engaged through a contractor viz. Good House Keeping and the payment was used to be made to the contractor who paid to the workmen. However, neither any copy of agreement, nor work order to the contractor had been filed by the management in support of its contention. The management witness, Dr. Victor Babu in his cross examination has stated that "**No certificate of registration or license in respect of the University and the Contractor, Good House Keeping, has been filed before this Tribunal. Likewise, no copy of agreement, executed between university and contractor, has been filed before this Tribunal. Copy of Form-5 and work order given to the good House Keeping is not available on file**"

From pleadings and evidence relied upon by the parties, it is established that the workmen were engaged through the contractor to carry out the work of perennial in nature; therefore the contract labour system got abolished. Further neither the University was registered as principal employer nor the contractor viz. Good House Keeping had license, making the so called contract between the factory and the so called contractor mere camouflage. Thus, the direct relationship of employer and employee gets established between the management of the University and the workmen. Hon'ble Apex Court in *Secretary, Haryana State Electricity Board vs Suresh & others 1999 LLJ 1087* has relied upon the observation made by it in its decision in *Air India Statutory Corporation etc. vs United Labour Union & others etc. 1997-I-LLJ-1113 SC* as under:

"In this behalf, it is necessary to recapitulate that on abolition of the contract labor system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

Also, Hon'ble Delhi High Court in *CWP No. 1981 of 1997 decided on 29.09.2000, 2001 (1) SCT 1943* has held that ***'in case the contractor has not taken a license as required under Section 12 of the Act, then the contract labour shall be treated as direct employees of the Principal employer.'***

Thus, from the law pronounced by Hon'ble Supreme Court, it comes out that the principal employer is under statutory obligation to absorb/regularize the contract labour as the linkage between the so called contractor and the employees stood snapped and direct relationship stood restored between principal employer and the contract labour lab, in the present industrial dispute.

13. Admittedly, the workmen were engaged to carry out casual nature of work, this fact has been admitted by the management in its written statement; while it has simultaneously denied the direct engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has

submitted that the burden of proof that the claimant was in employment of a Management primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference could easily be drawn against the management. The management ought to have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

14. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947, read as under:

25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer them for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category, from which retrenchment is contemplated, to be arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of the Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was reiterated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact.

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observe as under:

"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employer somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are will to work."

15. Admittedly, the management of the University engaged the workman for maintenance of garden and security work, which is perennial in nature. This fact is corroborated by their witness who stated that the workmen had been engaged through some contractor and after their removal fresh faces have been engaged in due course of time. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of law laid down in the above citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it made efforts to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the Industrial Disputes (Central), 1957.

16. The case of the workmen that they were retrenched and thereafter were not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that the management did not engage new faces; moreover, the management witness, Dr. Victor Babu stated that "the **services of Gardner is being availed in the University. Initially the contract was given to Good House Keeping and subsequently it was allotted to some other contract. The University is not bothered about who is being engaged by the contractor**" The management has focused its defence on the issue that the workmen had been engaged through a contractor but there is no evidence in this regard; moreover the noticed inviting tender, Annexure-1 to the written statement, paper no. 5/5 does not pertain to the University. However the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H of the I.D. Act, 1947 and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines factually and legally, by not producing any evidence with regard to the fact that it actually engaged the workmen through some contractor and subsequently made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces.

17. Thus, in view of the discussions made above, in the light of the principles propounded by Hon'ble High Courts and Hon'ble Apex Court, I am of the considered opinion that there was a relation of employer and employee between the management of University and workmen and the management of University did not comply with the provisions of Section 25 F & H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the University, in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workmen viz. Anand Kumar, Suresh Kumar and Ram Karan, who turned up for cross-examination, are entitled for reinstatement. As regard admissibility of back wages, it is admitted that they were engaged as daily wagers and were working as such i.e. were not regular employees, therefore, they have no right for back wages etc. in view of rule 'no work no pay'; but they shall be entitled for continuity of service and other consequential benefits as per Rules.

18. Award as above.

LUCKNOW

26th August, 2019.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2019

का.आ. 1706.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, हिंदुस्तान एरोनॉटिक्स लिमिटेड, कानपुर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 18/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.10.2018को प्राप्त हुए थे।

[सं. एल-42012/22/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 11th September, 2019

S.O. 1706.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2015) of the Central Government Industrial Tribunal-cum-Labour Court Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Kanpur, & Others, and their workmen which were received by the Central Government on 17.10.18.

[No. L-42012/22/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 18 of 2015

Between :

Sri Shiv Shanker son Asharfi Lal,
C/o Sri Vishnu Shukla,
L-21 Barra-6
Kanpur.

And

1. The Managing Director,
M/s. M.5 Security Pvt. Ltd.,
126 Green View Apartments, Mandi Road,
New Manglapuri, Mehrauli,
New Delhi.

2. The General Manager,
Hindustan Aeronautics Limited,
Aircraft Division, Transport Aircraft Division, Kanpur.

3. The Assistant General Manager,
M/s. UP Purva Sainik Kalyan Nigam Ltd.,
144-A 1st Floor, Vikas Nagar,
Kanpur.

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/22/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: "Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s. M5 Security Pvt Ltd., in terminating the services of Sri Shiv Shanker son of Sri Asharfi Lal workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working as security guard with effect from 01.10.2007 and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 in their reply has denied the claim petition of the workman in its entirety on the ground that the claim petition is patently false, frivolous and consisting of contradictory facts with a view to embarrass the answering opposite party to extort money. It is also alleged that although all of the workmen employed were independently recruited by Respondent no.3, except only one workman namely Vinod Kumar working with the previous sub contractor i.e. Respondent no.2 who expressed his desire to work with the answering respondent no.3 and the claimant has never approached the answering respondent for his recruitment and there is no contractual relation or master servant relations with the claimant workman in any manner whatsoever and there is no cause of action against the answering respondent no.3.

7. On Merit of the case it is alleged by the answering opposite party no.3 that the petitioner had deliberately and intentionally made vague statements as if the answering respondent was also concerned for the “nitty-gritty” during his alleged service period and the claimant had never approached the answering opposite party for his recruitment and as such there is no contractual or master-servant relation between the claimant workman and the answering respondent No. 3 in any manner whatsoever. Therefore, from the pleadings itself it is clear that the petitioner has not claimed any relief agaist the answering opposite party no.3. It is pertinent to mention that the answering opposite party has repeatedly averred the same version as has been discussed above, therefore, there is no need to reiterate the same. In any view of the matter the claim petition of the workman is liable to be rejected out rightly being devoid of merit.

8. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

9. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

10. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

11. The application moved by the representative of the workman was not opposed by opposite party.

12. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

13. Reference is therefore, answered accordingly in the aforesaid terms.

14. Award as above.

RAKESH KUMAR, Presiding Officer

Note : Name of the worker has been corrected in the array of the parties by order dated 10.04.19, passed by the Presiding Officer, CGIT, Kanpur, to read as Shiv Shanker instead of Sri Sunder Lal.

10.04.2019

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1707.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षण अभियंता, समन्वय मंडल (विद्युत) केंद्रीय लोक निर्माण विभाग,नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 95/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/62/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1707**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 95/2013) of the Central Government Industrial Tribunal-cum-Lab-our Court-2, New Delhias shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Engineer, Coordination Circle (Electrical) CPWD, New Delhi & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-42011/62/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 95/2013
Date of Passing Award- 29th July, 2019.

Between:
Shri Ram Basant,
S/o. Shri Kalapnath Pal,
Wireman, Through All India CPWD (MRM) Karmchari Sangathan,
H. No. 4823, Gali No. 13, Balbir Nagar Ext,
Shahdara, Delhi-32. …Workman

Versus

1. The Superintending Engineer,
   Coordination Circle (Electrical),
   CPWD, R.K. Puram,
   New Delhi- 110066.

2. The Executive Engineer,
   ED-7, CPWD, East Block,
   R.K. Puram, New Delhi. …Managements

Appearances:-

Shri Satish Sharma, (A/R) : For the Workman

Shri R.M Sharma, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CPWD, Coordination Circle (Electrical), and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/62/2013 IR(DU) dated 29.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the non-extension of the benefits of Rule 14 of CCS Pension Rules, 1972 to Shri Ram Basant S/o Shri Kalapnath Pal only on the ground that he is paid out of work charged fund and not out of contingencies fund is just, fair and legal? To what relief the workman concerned is entitled to?''

A claim petition has been filed by the claimant to the effect that he was appointed on hand receipt basis with the management on 15.12.1987 to discharge the work of Assistant Fitter, Asian Games Electrical Division CPWD. At present he is working as wireman in the management. He qualified in the departmental trade test for the post of Assistant Fitter on 24.08.1993. On 01.09.1993 he was allowed temporary status in the post of Assistant Fitter carrying pay scale Rs. 800 to 1150/-. In the year 1992 and 1993 8982 and 1610 posts respectively were created in CPWD with the sole purpose of regularizing the services of daily rated workmen working in CPWD for years. Pursuant to direction of Hon'ble Supreme Court when the, candidature of the workman was not considered. He had filed OA No. 1550 of 1999 before the Hon'ble CAT New Delhi claiming regularization of his service. Though the Hon'ble CAT directed regularization of the service of the workman against suitable vacancy and there were vacancies in the management, with some ulterior motive the management did not regularize his service immediately. However, the service of the claimant was regularized w.e.f. 28.10.2003. At the time of regularization his past 16 years service on daily rated basis was not taken into consideration nor any entry to that effect was made in his service book towards qualifying service for pensionary benefits. Though under Rule 14 of the pension Rule 1972 provides that 50% of the past service rendered on temporary status should be counted towards qualifying service for pensionary benefits, the management intentionally omitted to do so and thereby prevented the claimant from deriving the benefit thereof. Whereas the juniors of the claimants were given such benefits during regularization of services the claimant could not avail the same. When all the efforts made by the workman by filing representation to the authority failed he raised a dispute before the Labour Commissioner. The conciliation proceeding was taken up where the management participated. But no fruitful result could be achieved for the non cooperation of the management. The Appropriate Government then refereed the matter for adjudication in terms of the reference mentioned above.

Being noticed the management appeared and filed WS denying the claim of the workman. The specific stand taken by the management is that the workman was not appointed following due procedure. In the year 1986 engagement of daily wager/contractual workers and ad-hoc basis worker was closed. And in this regard office memorandum dated 19.11.1985 was issued. The workman was appointed on 15.12.87 on hand receipt to work as an Assistant Fitter. However on humanitarian ground the service of the workman was regularized on 28.10.2003 and since then he is getting all his service benefits. OA No. 1550 of 1999 was filed before the Hon'ble Central Tribunal Principal Bench Delhi and the said Tribunal while disposing the matter directed the management to consider regularization of services of the workman engaged through proper channel on Muster Roll. The candidature of present claimant was not considered since he was not an appointee in the muster roll. While admitting that some persons were regularized by the management, it is explained that the said persons were engaged on muster roll after the compliance of due process of public employment. Thereby the management has denied the claim of the workman for regularization of his service from the date of his initial appointment and to count 50% of the period of initial appointment to regularization towards the length of the service for pensionary benefits. On 1.03.2002 management took decisions to consider the claim of the persons including the

applicant and DPC was held on 12.12.2001. The claimant and the persons were found suitable for regularization. Accordingly his service was regularized w.e.f. 28.10.2003.

On this rival pleading following issues were framed for adjudication.

ISSUES

1. Whether the non-extension of the benefits of Rule 14 of CCS Pension Rules, 1972 to Shri Ram Basant S/o Shri Kalapnath Pal only on the ground that he is paid out of work charged fund and not out of contingencies fund is just, fair legal? If so its effect?

2. To what relief the workman are entitled to and from which date? If so its effect?

The workman examined himself as WW1 and filed a series of document exhibited as WW1/1 to WW1/10. He has filed documents relating to proof of his service with management documents relating to the Trade Test in which he had qualified documents relating to creation of post for regularization of service of temporary employees, copy of the order passed by the Hon'ble CAT Principal Bench Delhi, office memorandum regarding the result of the DPC in which he was found suitable for regularization and different circular of the departments, the correspondences from the management office regarding the service benefits granted to one Mahavir Prasad Uniyal etc. Similarly on behalf of the management one of its Assistant Engineer testified as MW1 and produced the documents relating to regularization of service w.e.f. 01.09.1993 the letter of the management giving promotion to the workman w.e.f. 20.03.1995.

The Ld. A/R for the workman submitted that the claimant was initially working as an Assistant Fitter on 15.12.1987 as a casual worker and continued to work as such without any interruption till 01.09.1993 in the pay scale of 800 to 1150/-. During this period he qualified in the trade test. Though he had completed 240 days of work in a calendar year and there were sufficient sanctioned post, the workman was not absorbed against the sanctioned post until 01.09.1993. Though in the year 1993 he was given a temporary status, his service was regularized only on 28.10.2003. At the time of regularization his earlier 16 years of service on temporary status was not taken into consideration to be counted for pensionary benefits. Though under Rule 14 of the Pension Rules 1972 there is a clear provision for counting half of the service period rendered in temporary status for the pensionary benefits, the management intentionally didn't do so in the case of the claimant when the said benefits was extended to other employees.

In counter argument the Ld. A/R for the management submitted that the present claimant was never appointed under the Muster Roll but under a hand receipt. On humanitarian consideration the claimant was regularized in his service w.e.f. 28.10.2003. The provisions of Rule 14 are applicable to the employees under the Muster Roll and not to the persons appointed under the hand receipt. He also argued that in the year 2003 when the vacancies were available the workman was regularized in his post and the past years service rendered by him cannot the calculated for his pensionary benefit. He also argued that the Hon'ble CAT had never directed for regularization of the service of the workman. Rather there was a direction for consideration of the regularization on the availability of the vacancy.

FINDING

ISSUE No. 1

There is no dispute to the fact that the workman had started working as an assistant Fitter in CPWD w.e.f. 15.12.87. The oral evidence of the workman find support from the oral evidence of the management witness examined as MW1. On behalf of the workman some documents were been filed and marked as WW1/1 (Colly). These are some certificates issued by the Engineers of the CPWD acknowledging that the claimant started working for CPWD in the office of Superintending Engineer, Electrical R.K. Puram Delhi w.e.f. 15.12.87. The management has disputed the status of the workman explaining that he was not a Muster Roll employee to claim automatic regularization. He was appointed by one engineer on hand receipt in the year 1987. But prior to that w.e.f. 1986 appointment by hand receipt and appointment of daily wager was completely banned. A memorandum was issued by the Director administration on 19.11.1985. But no such memorandum dated 19.11.85 has been placed on record. The documents marked as MW1/1 and MW1/2 are the letter correspondences regarding the procedure of appointment in the nature of clarification of the memorandum dated 19.11.85. No explanation has been offered by the management as to why the memorandum dated 19.11.85 was not placed on record. It is true that this memorandum has been referred to in later correspondences of the management exhibited as MW1/3. But that document marked as MW1/3 would not prove the contents of the office memorandum dated 19.11.85 imposing a ban on engagement of daily wager, casual worker on Muster Roll. On the contrary the workman has filed the certificate evidencing his employment marked as WW1/1 (Colly) to prove that he was serving in the CPWD w.e.f. 15.12.1987. Now it is to be seen if the service of the workman was not regularized deliberately by the management.

The workman has stated in his oral statement that some employees of CPWD standing in the same footing with that of claimant had approached the Hon'ble Supreme Court by filing WPC No. 563-70/83 and the Hon'ble Apex Court gave a direction that the Government should take appropriate action to regularize the services of all those who have been

incontinous employment for more than 6 months after scrutinizing the service record of all eligible person. But the management whimsically regularized the service of some workers but did not regularize the service of the present workman. Being aggrieved he and some others approached the Hon'ble CAT by filing OA No. 1550 of 1999. By filing the copy of the order passed by the Hon'ble Bench of CAT the workman asserted that inspite of the clear direction by the Hon'ble CAT the management delayed the matter and regularized his service in the year 2003 only and thereby discriminated him.

In reply the Ld. Counsel for the management submitted that the Hon'ble Supreme Court and the Hon'ble CAT had issued a direction for the Muster Roll employees and the CAT also directed to regularize their services when the vacancy would be available. The management constituted a DPC when vacancy arose and regularized the service of the claimant in 2003. He was never discriminated by the management.

The documents filed by the workman shows that the Hon'ble CAT passed the order directing a regularization of the service of the workman on 15.11.2000 and the department as seen from the document exhibit WW1/5 considered the candidature of the workman in the DPC held on 12.12.2001 but regularized his service in 2003. On behalf of the management the witness stated that there were no vacancy at that time and as soon as the vacancy was created he was regularized. But on behalf of the workman some more documents have been filed which reveals that pursuant to the order passed by the Hon'ble Supreme Court in WPC No. 563-70/83 the management had created 8982 post in the work charged establishment of CPWD vide notification dated 01.09.92 marked as exhibit WW1/3 . These vacancies were created to regularize the muster roll workers. The said notification reveals that 830 posts in the cadre of wireman were created then.

On the basis of this document the workman/claimant argued that there were vacancies in the year 1992 and he had qualified in the Trade test of fitter in the year 1993. But the management intentionally omitted to regularize his service. In reply the Ld. A/R for the management argued that the posts were created for regularization of Muster Roll employees and not for the persons appointed on hand receipts.

It is true that in the different correspondences made by the management department it has been stated that the posts were created for regularization of service of Muster Roll employee and admittedly the claimant was appointed under a hand receipt. It is not also disputed that the workman was not appointed following the procedure prescribed for employment in CPWD. But at the same time it cannot be ignored that in the year 1993 when this workman had qualified in the trade test there were vacancies created pursuant to the notification dated 01.01.1992. Since the management has not regularized his service he had approached the Hon'ble CAT by filing OA No. 1550 of 1999 in which a direction was issued for regularization subject to availability of vacancy. No evidence at all has been adduced by the management to show that there were no vacancies when the order was passed by the Hon'ble CAT on 15.11.2000. This leads to a conclusion that the management having vacancy had intentionally omitted to regularize the service of the workman till the year 2003 on the plea that he was not a Muster Roll employee.

The Ld. A/R for the management giving stress on the pleading of the workman and the reference received from the Appropriate government submitted that this dispute is confined to the reference only and under the scope of the reference this tribunal has to decide if the claimant is entitled to get the benefit of Rule 14 of the CCS Pension Rules 1972 for counting 50% of his past service for the purpose of qualifying service. This tribunal cannot travel beyond the reference to adjudicate about the legality and appropriateness of the regularization of the service of the workman in the year 2003.

This argument advanced by the Ld. A/R for the management doesn't hold good in view of the observation of the Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another vs. Employer I/R to management of Food Corporation of India and another reported in (2014) 7 SCC 190.** In this case the Hon'ble Supreme Court while relying upon its earlier judgment in the case of Maharashtra SRPC reported in AIR 2009 have held:-

> "The powers of the industrial adjudicator under the Industrial dispute Act are equally wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has at tempted to frustrate the unfair labour practice and secure the policy of collective bargaining as a road of industrial peace."

In the case of Hari Nandan Prasad it has also been observed while quoting the judgment of the Hon'ble Supreme court in the case of Bharat Bank Limited vs. Employees of Bharat Bank Limited reported in 1950 LLJ 921 and the case of Life Insurance Corporation of India vs. D.J Bahadur reported in 1980 Labour and Insurance Cases 1281, that in order to achieve the objectives the Labour Court/Industrial Tribunal are given wide powers not only to enforce the rights but even to create new rights, with the underline objective to achieve social justice.

In the case of Bharat Bank referred supra the Hon'ble Supreme Court way back in the year 1950 had observed

"In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they many not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace"

Thus, keeping in view the observation of the Hon''ble Supreme Court in the case of Bharat Bank Limited, LIC Vs. D.J. Bahadur and Hari Nandan Prasad referred supra and also keeping in view that the reference has been received from the Appropriate Government for adjudication of the dispute and to give a finding about the relief to which the workman is entitled to, this tribunal is of the view that the regularization of service of the workman which has a bearing on the main issue i.e. the qualifying service in terms of Rule 14 of the CCS Pension Rule 1972 well falls within the scope of the adjudication and this tribunal is empowered to give a finding on the same.

The main grievance of the workman is that as per Rule 14 of the pension Rule 1972 50% of the years of service rendered as a temporary workers shall be taken into consideration for giving pensionary benefits to the employee. This benefit has been denied to the workman though allowed to some other employees. The management has explained that the benefit is a extendable under Rule 14 to such persons who were getting salary from the contingent fund only. No evidence has been adduced by the management to prove that the claimant was being paid from any other fund than the contingent fund. On the contrary on behalf of the workman documents have been filed which were marked as WW1/7 (colly) and these are the correspondence made by the Director General of Works, the Administrative head of CPWD to the Executive Engineer Dehradun Central Division CPWD regarding pension case of late Mahavir Prasad Uniyal, ex work assistant. In the said correspondence it has been clarified by the Director General of Works that Shri Uniyal worked from 09.08.51 to 31.03.54 i.e. 2 years 7 months and 22 days and paid from contingencies. As per Rule 14 of CCS (pension) Rules,1972, half the service paid from contingencies is counted towards pension at the time of absorption in regular counted towards pension at the time of absorption in regular employment. Shri Uniyal worked as "Meter Reader" on work-charged establishment in CPWD from 01.04.1954 to 05.03.1963 (i.e. 8 years 11months and 4 days). The service rendered as work-charged employee by Shri Uniyal may be considered for counting as qualifying service for benefits as per rules. Shri Uniyal worked as work-assistant for 2 years 6 months and 16 days (from 06.03.63 to 22.09.65) in regular establishment. Thus, the total qualifying service worked out to 12years 9 months and 17 days (1 year 3 months 26 days +11 years 5 months and 21 days) i.e. 13 years (approx). Fraction of a year equal to 9 months and above should be treated as two half years i.e. one completed year. Hence the period of 5 years and 9 months will be reckoned as 6 years and not 5 years 6 months of qualifying service as mentioned above."

This clearly indicates that the management in the case of Shri Uniyal had counted 50% of the service rendered by him as a temporary worker for counting the qualifying service for the pensionary benefit and the present claimant has been discriminated in this regard on the ground that during his temporary service period he was not being paid from contingent fund though there is absolutely no evidence to believe that his payment was not being made from the contingent fund. The reference is thus, to be answered in favour of the workman.

ISSUE No.2

In view of the finding issue no. 1 it is held that the workman is entitled to the benefit of 50% of his years of service rendered towards qualifying service for the benefits in the pension etc. hence, ordered.

ORDER

The reference be and the same is answered in favour of workman. It is held that the service of the workman in view of the existing vacancy will be deemed to have been regularized w.e.f. date when he qualified in the Trade Test in the year 1993 pursuant to the test held on 24.08.1993 as evident from the document marked as WW1/2. It is further directed that the workman shall get the benefit of Rule 14 of the CCS Pension Rule 1972 to the extent of 50% of the years of service rendered by him before regularization for calculation of his qualifying service so as to enable him to derive the pensionary benefits there from. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

29th July, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1708.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सेंट्रल रोड रिसर्च इंस्टीट्यूट, दिल्ली नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली-2 के पंचाट (संदर्भ संख्या 112/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.9.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1708**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 112/2015) of the Central Government Industrial Tribunal-cum-Labour Court New Delhi-2 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Central Road Research Institute, Delhi New Delhi & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 112/15

Date of Passing Award- 29th July, 2019

Between:

Shri Mukesh Kumar,
S/o Shri Ramji Lal,
R/o Village Narainpur Post Jarara Thana Arniya
Bulandshaer U.P. … Workman

Versus

1. M/s. Central Road Research Institute,
   Delhi Mathura Road PO CRRI New Delhi- 25

2. M/s. Metro Security and Allied Services,
   Shop No. 6&7, JP Complex Bank Rastria Munirka
   New Delhi. …Managements

Appearances:-

Shri Vinod Kumar, (A/R) : For the Workman.

None for the management (A/R : For the Management

AWARD

This is an application field u/s 2A of the Act by the workman against the management no.1 and 2 praying a direction for reinstatement alongwith back wages and other service benefits.

The contention of the claimant is that he was working with management No.2 i.e. M/s Metro Security and allied services since 21.10.2012 as a security guard. His place of posting was in M/s Central Road Research Institute and the Monthly salary was 12400/-. During the period of service he was discharging his duty to the utmost satisfaction of the

employer and at no point of time any complaint was ever made against him. However he was often demanding appointment letter, Leave salary, bonus, salary Slip, and permissible salary hike. The management No.2 was assuring him to fulfill his demands. On 21.09.2014 without assigning any reason his service was terminated and he was compelled to accept the final settlement of his dues. His demand for duty pay for the period 01.09.2014 to 020.09.2014 was also turned down by the management. Finding no other way on 27.09.2014 the workman issued a demand notice to the management for reinstatement into service. When the management paid a deaf year he raised a dispute before the Labour commissioner where the management No.2 did not appear to participate in the conciliation proceeding. Management No.1 appeared before the Labour Commissioner and denied the claim of the workman. Since the proceeding before the Labour Commissioner could not reach the logical conclusion he filed a present application praying a direction to management No.2 for reinstatement into service and for payment of his back wages alongwith other service benefits.

Being noticed the management No.1 appeared but did not file any written statement. Management No.2 filed written statement refutting the allegations leveled by the workman. While denying that the termination of the workman was illegal its stated that this management had granted appointment letter leave book salary slip, ESI Card, PF No. etc to the workman. The workman was an indisciplined person and in the habit of coming to the duty late and on many occasions he was found in the office premises being intoxicated. On this issue on many occasions verbal warning was given to him. The workman stopped coming to the office and made false complaints before different authorities. The management issued notice to him calling him to resume duty and a copy of the notice was also affixed on the notice board. The management was always ready and willing to take the workman on duty provided he gives an undertaking to behaving a disciplined manner. The workman during his tenure of employment was given all benefits as due and no part of his salary was ever held up by the management No.2.

On this rival pleading following issues were framed for adjudication.

ISSUE

1. Whether the termination of the claimant by the management is illegal and against the provision of ID Act?
2. Whether the claim petition is not maintainable against management in view of various preliminary objections?
3. Whether the claimant is entitled for reinstatement into service with back wages as claimed.

The claimant examined himself as WW1 and proved the documents in a series of WW1/1 to WW1/9. This document includes the demand notice the claim filed before the Labour Commissioner and I-card issued by the management No.2 to the claimant. On behalf of the management No. 2, no evidence was adduced.

At the outset of the argument the Ld. A/R for the workman submitted that management No.2 has admitted the employer employee relationship between the said management and the claimant. Whereas the claimant has alleged that the service was terminated illegally the management No.2 has taken a plea that the claimant/workman voluntarily left his service. In the WS the management has also expressed its desire to retain the workman as an employee provided he undertakes to behave properly. In such a situation this tribunal should pass an award in favour of the workman as prayed by him.

In his oral statement the workman has stated that he was working for management No. 2 from 21.10.2012 till his service was terminated on 21.09.14 and his monthly salary was 12,400/-. The management without assigning any reason and without initiating any domestic inquiry terminated his service and at the time of termination no notice, notice pay, or retrenchment compensation was paid to him. Though he was discharging his duty diligently, the illegal termination has left him unemployed since then. The witness was not cross-examined by the management. Thus the evidence of the workman remains unchallenged and uncontroverted by the management No. 2. Since the management in the WS had expressed its willingness to retain the employment of the workman and there is no evidence adduced by the management to prove that the workman had voluntarily left the job, this tribunal has no second opinion then to accept the contention of the claimant/workman that his service was terminated illegally and he is entitled to reinstatement to service. There is no evidence regarding gainful employment of the workman during the intervening period of termination and this award

which makes him entitled to back wages. But keeping the principle of no work and no pay in view this tribunal feels it proper to direct the management No.2 to pay compensation to the workman in lieu of full back wages. Hence, ordered.

ORDER

The claim be and the same is allowed in favour of the workman and against the management No.2. So far as the claim against management no. 1 is concerned the same is dismissed. The management no.2 is directed to reinstate the workman into service with the last pay he was drawing and pay him one time compensation of Rs. 50,000/- to quantify the loss suffered by him. It is further directed that the management no. 2 shall reinstate the workman and pay him the compensation within 2 months from the date when this award would become enforceable. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

29th July, 2019.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1709.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षण अभियंता, समन्वय मंडल (विद्युत) केंद्रीय लोक निर्माण विभाग, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 63/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल-42011/57/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1709.—**In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2016) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Engineer, Coordination Circle (Electrical) CPWD, New Delhi & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-42011/57/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 63/16

Date of Passing Award- 29th July, 2019

Between:

The General Secretary,
CPWD Mazdoor Union,
C/o Room No. 95, Barracks,
No.1/10, Jam Nagar House, Shahjahan Road,
New Delhi- 110011. … Workman

Versus

1. The Director General (Works)
CPWD, Nirman Bhawan,
New Delhi-110001.

2. The Executive Engineer,
Faridabad Central Division No.1,
CPWD, NH-4, Faridabad-121008.

…Managements

Appearances:-

Shri Satish Kumar, (A/R) : For the Workman

Shri Atul Bhardwaj, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management CPWD, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/57/2016 (IR(DU) dated 02.16.2016 to this tribunal for adjudication to the following effect.

> "Whether the demands of the Union All India (MRM) Karamchari Sangathan (Regd.) in respect of regularizing the services of the workman Late Sh. Santosh Singh, Sewer man from the date of regularization of Junior workman is legal and justified? If yes, what relief the wife of Late workman Smt. Usha Devi is entitled to receive and from which date?''

The claimant filed the claim statement containing that the claimant Usha Devi is the Widow and legal heir of late Shri Santosh Kumar who was initially appointed as a Sewerman w.e.f 01.01.1987 on hand receipt. He was granted temporary status w.e.f. 01.01.1993. Though as per the CPWD manual the temporary workman is entitled to regularization of his service on completion of 2 years as a temporary status workman, the management did not extend the benefit to him though there were sufficient sanctioned posts. The workman Santosh Kumar was repeatedly making demand in this regard. On 22.07.2011 Shri Santosh Kumar while in service died and by that time he had completed service of 24 years and 8 months with the management. After his death though his family granted gratuity, no pensionary benefit was allowed to the family which is contrary to the direction of the Hon'ble Supreme Court to the CPWD for regularization of the service of all the persons who have completed more than 10 years as temporary workers by formulating a specific scheme for the purpose.

The management CPWD appeared in response to the notice and challenged the maintainability of the proceeding. It also challenged the maintainability for wants of espousal. While denying all other averments of the claim statement, it stated that the superintending engineers conducted a DPC for regularization of the service of the temporary employees. For the sudden death of Shri Santosh Singh his service could not be regularized and his juniors were regularized.

On this rival pleading the following issues were framed for adjudication.

1. Whether the demands of the Union All India CPWD (MRM)Karamchari Sangathan (Regd.) in respect of regularizing the services of the workman late Shri Santosh Singh, sewerman from the date of regularization of Junior workman is legal and justified? If so its effect?

2. If yes, what relief the wife of Late workman Smt. Usha Devi is entitled to receive and from which date?

During the hearing the claimant Usha Devi wife of Late Shri Santosh Kumar testified to say that the dispute was filed for regularization of the service of her late husband, payment of pension and all terminal benefits. She further stated that during the pendency of the proceeding the respondent/management granted family pension, arrear pension, gratuity and all other terminal benefits of her late husband amounting to Rs. 10,56,006/- she further stated that she has no other claim for adjudication against the management. To support her contention the authorized representative of all India CPWD (MRM) Kararmchari Sangathan who testified as WW2 also stated about the release of pension and other benefits in favour of the claimant.

In view of the statement of the claimant and the satisfaction expressed, there remains nothing for adjudication in respect of the reference received. Hence, ordered

ORDER

The reference be and the same is answered in favour of the claimant. The claim of the claimant since has been satisfied the reference is disposed off accordingly. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

29th July, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1710.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रजिस्ट्रार, जवाहरलाल नेहरू विश्वविद्यालय, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 10/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल-42011/09/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1710.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2016) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Jawaharlal Nehru University, New Delhi & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-42011/09/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 10/2016

Date of Passing Award- 22nd July, 2019

Between:

The General Secretary,
All India General Kamgar Union (Regd.),
H. No. U-90, Shakarpur,
Delhi- 110092. … Workman

Versus

1. The Registrar,
   Jawaharlal Nehru University,
   New Delhi- 110067.

2. M/s. Vayudoot Security Services Pvt. Ltd.
   M/s. Vayudoot Security Services Pvt. Ltd.,
   2209, Kucha Alam Chand, Kinari Bazar, Chandni Chowk,
   Delhi- 110006. …Managements

Appearances:-

Shri Lal Babu Lalit, (A/R) : For the Workman

None for the management, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Jawaharlal Nehru University, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/09/2016 (IR(DU) dated 09.03.2016 to this tribunal for adjudication to the following effect.

> "Whether the demand of the Union for paying the salary, pay and allowances to the workmen concerned mention in Annexure-a at par with their regular counterparts employed by the JNU is legal and/or justified and is so to what relief the said workmen are entitled and what directions are necessary in this regarded? Whether the demand of the union to provide the benefits of bonus to the workmen mentioned in Annexure-A is legal and/or justified and if so at what rate and what relief are the workmen concerned entitled and what directions are necessary in this regard? Whether the demand of the union to provide the benefits of earned leave, casual leave and privileged leave to the workmen mentioned in Annexure-A is legal and/or justified and if so at what rate and to what relief are the workmen concerned entitled to and what directions are necessary in this regard? Whether the demand of the union to provide the benefits of conveyance allowance @ Rs. 2000/- per month, HRA @ Rs. 3000/- per month, Health allowance @ Rs. 1000/- DA over and above the basic wage, LTC to the workmen mentioned in Annexure-A is legal and/or justified and if so at what rate and to what relief are the workmen concerned entitled and what directions are necessary in this regard?"

According to the claim statement of the workmen (65 in number) were working as Safai Karamchari in Jawaharlal Nehru University since the year 2004. They were so appointed after the interview pursuant to their application submitted to the management. Though the workmen are discharging their duty with utmost sincerity and engaged in multifarious nature of work being deployed in different offices of the University including hostels, treated with discrimination by the management. Whereas the regular staff of JNU performing the same kind of work are asked to work for definite time these workmen are often asked to work for extra time. Their demand for minimum wage facilities for PF, gratuity, weekly off, bonus etc where never considered by the management. Finding no other way they served a demand notice on the management and raised a dispute through All India General Kamgar Union after proper espousal before the Labour Commissioner. Though a conciliation proceeding was taken up before the Labour commissioner and the management university participated in the same, no fruitful result could be achieved. Hence, the Appropriate Government referred the matter to this tribunal for adjudication in terms of the reference.

Though noticed the management JNU did not appear. On behalf of the management No.2 i.e. Vayudoot Securities Services the authorized representative though appeared for some time later on abandoned the proceeding. Thus, by order dated 18th July 2018 the right of the managements to file WS was closed.

Thus, in this adjudication it is to be decided

1. If the workmen are entitled to the relief of pay and allowance at par with their regular counter parts employed by the JNU.

2. If so who is responsible for the payment of the same and from which date.

On behalf of the workmen one of the claimant named Protyush Nandi testified as WW1 and proved certain documents marked as Exhibit WW1/1 to WW1/9. These documents include the demand notice, the claim raised before the Labour Commissioner the reply submitted by the University before the Labour Commissioner the I-cards issued to the claimants, the salary slip of the claimants etc. The witness has stated that he and other claimants are working in JNU since 2004 and were issued I-cards by the management. They are also getting salary from the University management. The witness has further stated that the nature of work discharged by them is similar to the nature of work discharged by the regular employees of Jawaharlal Nehru University. But they are victims of discrimination as their salary and other benefits are much less than the regular employees. Whereas the regular employees doing the same nature of work are availing weekly holidays on Saturday and Sunday the claimants/workmen are not getting the said benefit. Their protest letter addressed to the Registrar of the University and Assistant Labour commissioner has remained unheard. The Assistant Labour Commissioner though took steps for conciliation, for the adamant behavior of the management JNU the conciliation could not reach a logical end. By filing a copy of the reply submitted by the management before the Labour commissioner the workmen have claimed that the relief prayed in the claim petition be allowed.

Neither the management No.1 nor Management No.2 have controverted the stand taken by the claimants. But it is the basic requirement of adjudication that the person claiming the benefit bears the responsibility of proving his claim.

In this case though the workmen are claiming to be the employees of the JNU and also claiming equal treatment with the regular employees of JNU have failed to discharge the primary burden of proving employer and employee relationship between JNU and the claimants. The salary slips filed by the claimants do not contain any seal and signature of the establishment making the payment. On the contrary these documents appear to be the salary slip prepared by the Vayudoot Securities Services, Jai Bala Ji Security Service and Max maintenance limited the contractors engaged for providing manpower, in the estate office of JNU. Not only that the I-cards filed by the claimants appear to have been issued by Vayudoot Securities Services, Jai Bala Ji Security Service and Max maintenance limited. These documents too no way prove the employer employee relationship between JNU and the claimants. Hence, on the basis of the evidence adduced no responsibility can be fixed on the management JNU for providing equal pay and other benefits to the claimants at par with the regular employees of JNU discharging similar nature of work.

The other important question is if the claimants have been discriminated in respect of pay and service benefits in comparison with the regular employees of JNU. Though this fact has been pleaded by the claimants in the claim petition and their salary slips have been filed there is no evidence to compare their salary etc with that of the regular employee to find out if there is any disparity or discrimination as claimed by them. In absence of proof it is held that the workman have failed to prove the alleged discrimination. A photocopy of a document which is the order dated 17.09.2018 passed by the Deputy Chief Labour Commissioner New Delhi has been filed by the workmen. On the basis of this order the Ld. A/R for the claimants submitted that the Deputy Chief Labour Commissioner after considering the claim of the workmen agitated through the Union have passed an order directing payment of same wage to the contract workers at par with the employees directly employed by the principal employer. This order was passed on the grievance of the contract workers working through the contractor in the premises of JNU and the said order is equally applicable to the Safai Karamcharis too.

Hence, having regard to the circumstances of the matter and the evidence adduced this tribunal is of the view that these workmen being the contract workers are entitled to equal pay and allowances alongwith the earned leave, casual leave at par with the employees discharging similar nature of work being employed directly by management No.1. These benefits are to be paid by the contractor Vayudoot Securities Services Management No.2 to the persons employed by him. There having no evidence regarding the conveyance allowance health allowance LTC etc paid to the regular employees no order can be passed in this regard. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workmen. Management No.2 Vayudoot Securities Services is directed to pay the wage/salary and other financial benefits at par with the regular employees of JNU discharging similar nature of work and extend the benefits of earned leave, casual leave availed by the regular employees to the claimants. This direction shall be made effective within 1 month from the date when award would become enforceable. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

22nd July, 2019.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1711.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त,दिल्ली नगर निगम, कमला मार्केट, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 130/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल-42011/225/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1711.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 130/2012) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, MCD, Kamla Market, New Delhi & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-42011/225/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 130/2012

Date of Passing Award- 22nd July, 2019

Between:

Shri Puran Singh,
S/o Shri Thakur Singh,
Through- The General Secretary,
Municipal Employees Union,
Agarwal Bhawan, G. T. Road, Tis Hazari,
Delhi. … Workman

Versus

The Commissioner,
MCD, Civic Centre, J.L. Nehru Marg,
Kamla Market, New Delhi- 110002. … Management

Appearances:-

Shri Surender Bhardwaj, (A/R) : For the Workman

Smt. Vasu Singh, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of MCD, Civic Centre, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/225/2011 (IR(DU) dated 07.08.2012 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Municipal Corporation of Delhi in not regularizing the services of workman Shri Puran Singh, prior to 01.04.1995 is legal and justified? If not, what relief the workman is entitled for and from which date?"

The claimant in the claim statement has stated that he was in the employment of the management as Mali/Beldar w.e.f. 02.01.1984 as a Muster Roll employee. For such employment he was being paid the wages as fixed and revised by the management from time to time in accordance with the government notification under the Minimum Wages Act. But he was not getting other benefits like his regular counterparts discharging the similar nature of work. The management had illegally terminated his service with effect from 25.07.1986 and he had challenged the same raising Industrial Dispute before the Labour Court No.3 Tis Hazari Court Delhi by filing Id No. 192/89. The Presiding Officer Labour Court No.3 by order dated 08.01.1999 gave a finding that the termination of service of the claimant is illegal and unjustified. He also directed for reinstatement of the workman to service with 30% back wages w.e.f. 27.05.1988 i.e the date when the demand notice was served by the claimant till the enforcement of the award. Pursuant thereto the management reinstated the workman into service. Thereafter the claimant/workman raised another Industrial Dispute bearing no. ID 10/2006 claiming regularization of his service since his initial date of appointment i.e. 02.01.1984. In that regard a reference was made by the Appropriate Government. But unfortunately in the reference by the Appropriate

Government the initial date of appointment was wrongly typed as 02.01.1994 instead of 02.01.1984. In view of the same the Ld. Presiding Officer Industrial Tribunal No.1 while passing award dated 15.07.2006 directed the management for regularization of the service of the claimant alongwith consequential benefits as per the policy of the management from the date when his counter parts where regularized or in alternative w.e.f. 02.01.1994 i.e. the date mentioned in the reference.

When this fact came to the knowledge of the workman he approach the Industrial Tribunal for correction of the date which was turned down on the ground that the award cannot be passed beyond the scope of the reference. Pursuant to the said award though the management was duty bound to regularize the service w.e.f. 02.01.94, in a whimsical manner the service of the workman was regularized w.e.f. 1.04.1995 and an order to that effect was issued on 09.08.2007. All efforts and representations made by the claimant requesting regularization of his service from the date when the service of his counter parts were regularized yield no result. He then raised a dispute before the Labour Commissioner. Conciliation proceeding was taken up but the same failed. Again the Appropriate Government referred the dispute for adjudication as per the terms of reference.

The management appeared and filed WS admitting the awards passed in earlier Id No. 192/89 and Id No. 10/2006. The management has also admitted that vide order dated 09.08.2007 the service of the workman was regularized w.e.f. 01.04.1995. The management has explained that the claimant/workman is not entitled to regularization as claimed by him since in the award passed in ID No. 192/89 there was no direction for continuity of service. Hence, after reinstatement his service was treated as fresh appointment and according to the seniority his service has been regularized. It has further been pleaded that the management corporation has its own policy of regularization which envisages that regularization shall be made on phased manner subject to availability of post and fund. The workman cannot claim regularization from the date of his initial appointment.

On this rival pleading the following issues were framed for adjudication.

1. Whether the action of the management MCD in not regularizing the service of the workman prior to 01.04.1995 is legal and justified.
2. To what relief the workman is entitled to and from which date.

During the hearing the workman examined himself as WW1 and proved a series of documents marked as WW1/1 to WW1/26. These documents include the awards passed in previous proceedings, the information obtained through RTI regarding the policy of the management for regularization of the service of daily wage employee and the statement of the management witness recorded during the previous two Industrial Disputes proceedings.

Despite opportunity given the management neither cross examined the witness examined by the workman nor examined its own witnesses. The rights were closed by order dated 05.12.17 and 25.05.18.

During course of argument the Ld. A/R for the management while drawing the attention of the tribunal to the award passed in Id 192/89 submitted that in that award the tribunal came to hold the order of termination to be illegal and directed for reinstatement of the workman with 30% back wages w.e.f. 27.05.1988. There was no direction for continuity of service and as such the claimant/workman pursuant to his reinstatement was treated as a fresh appointee and his service was regularized according to his seniority. He was never discriminated by the management in this regard.

This argument of the Ld. Counsel doesn't sound convincing at all. It is true that in the award dated 08.01.1999 passed in Id No. 192/89 there is no specific observation regarding continuity of service. But the judgment and awards are to be read with the spirit and not by the words used. When the Ld. Presiding officer directed for reinstatement with back wages and the management complied the same, it is not acceptable that he was reinstated as a fresh appointee. Payment of back wages justifies his continuity of service. Now the plea that he was treated as a fresh appointee and regularized according to seniority cannot be accepted as a logical and sound act of the management based upon Rules and Procedure.

The next important question is if the action of the management in regularizing the service of the workman w.e.f. 01.04.1995 is legal and proper. It is profitable to look into the award dated 15.07.2006 passed in Id No. 10/2006. In the said award the Tribunal directed regularization of service of the workman from the date when the counter parts of the workman were regularized or in alternative w.e.f. 02.01.1994. But the management as seen from the regularization order dated 09.08.2007 neither regularized him w.e.f. 02.01.1994 nor from the date when his counter parts were regularized. The service of the workman was regularized on an all together different date i.e. 01.04.1995. The Ld. A/R for the management explained during course of argument that as per the policy of the management which has been approved by the Hon'ble Delhi High Court the temporary workers are to be regularized according to their seniority and subject to the availability of the vacancy in phased manner. The said procedure was adopted in the case of the claimant.

There is no dispute about initial date of appointment of the workman on 02.01.1984 and this has not been specifically denied by the management in the WS. On behalf of the claimant the statement of the management witness recorded in Id No. 10/2006 has been filed and marked as exhibit WW1/15. The other document filed by the claimant also

reveals his date of initial appointment as 21.09.84 and the oral evidence of the workman has not been controverted by the management. Hence, from the oral and documentary evidence it is proved that the workman was initially appointed as a Beldar in the Muster Roll on 02.01.1984.

On behalf of the workman the resolution No. 709 dated 20.11.78 passed by the MCD has been filed as WW1/18. In this resolution the MCD had resolved that after approval of the policy all the Daily wage employee shall be regularized in phased manner in regular grade. A chart indicating the daily wager engaged during the period and the period from which they should be regularized was annexed with the resolution proved as exhibit WW1/18. As per this document all the persons appointed in Class-IV between 01.04.1984 to 31.03.1986 having worked for consecutive 2 years shall be regularized w.e.f. 01.04.1990. Hence, this claimant having been appointed w.e.f. 02.01.1984 and since had completed service for 2 consecutive years before his termination on 25.07.86 is entitled to regularization w.e.f. 01.04.1990.

The workman has placed a document on record marked as WW1/14 which is the information obtained through RTI from the management which reveals that the daily wage workman engaged during the period 01.04.84 to 31.03.86 have been regularized w.e.f. 01.04.90 as per the policy resolution no 952 dated 04.06.91. Not only that the copy of the statement of the management witness recorded in ID No. 10/2006 contains the admission of the management witness in this regard who has stated that the similarly situated employees as of Puran Singh have been regularized in service as Mali in the regular Pay Scale with all consequential benefits w.e.f. 01.04.90 and the claimant/workman is entitled to the same.

In view of the oral and documentary evidence it is held that the claimant is entitled to regularization of his service w.e.f. 01.04.1990 alongwith all consequential benefits including monetary benefit instead of getting the said benefit w.e.f. 01.04.1995.

The reference is accordingly answered. Hence, ordered

ORDER

The reference be and the same is answered in favour of the workman. It is directed that the service of the workman shall be regularized w.e.f. 01.04.1990 alongwith all consequential benefit including monetary benefit instead of being regularized w.e.f 01.04.1995. the management is directed to calculate and give the consequential benefit as directed to the workman within 2 months from the date when the award would become enforceable failing which the amount accrued shall carry interest @ 6% per annum from the date of accrual till final payment is made. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

22nd July, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1712.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, फरीदाबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल-40012/65/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1712**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2012.) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, BSNL ,Faridabad & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-40012/65/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 12/2012

Date of Passing Award- 29th July, 2019

Between:

Shri Vijay Kumar,
S/o Shri Chander,
V & PO- Pali, Distt.
Faridabad. …Workman

Versus

The General Manager
BSNL Sector- 15,
Faridabad. …Management

Appearances:-

Claimant in person, (A/R) : For the Workman

Shri Deepak Thukral, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 40012/65/2011 (IR(DU) dated 05.12.2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of BSNL, Faridabad in terminating the service of Shri Vijay Kumar S/o Shri Chander, Ex-Cable Jointer w.e.f. 23.08.2010 is legal and justified? What relief the workman is entitled to?''

The claimant filed the claim petition sating therein that he joined the management BSNL on 10.01.1996 as Cable Joinder on a monthly salary of Rs. 1500/- which was revised time to time and his last drawn monthly salary was 3500/-. When he was discharging his duties with utmost perfection, raised his grievance before the management for not getting the facilities of PF, ESI, Holiday leave, bonus, over time dues etc. Being annoyed on 23.08.2010 the management terminated his service illegally and at the time of termination no notice, notice pay, retrenchment compensation, was paid. All the efforts made by the workman for his reinstatement failed. He was not even paid the duty pay for the month of August 2010. Finding no other way he served a demand notice on the management to which the management gave a reply denying all the contention raised by the workman. He then raised a dispute before the Labour Commissioner where a conciliation was taken up but no result could be achieved. Reference being made by the appropriate Authority the matter is pending for adjudication.

The respondent/management appeared and filed WS denying the stand taken by the claimant/workman. It has been stated that the management has sufficient staff of Group-C or Group-D and thus, the department do not engage daily wager for work. If any petty work is required to be done, the same is executed by the contractors engaged by the management. While furnishing the list of contractors engaged by the management during the period between 1999 to 2007 the management took a plea that the workman might have been engaged by the contractor and his claim against the management is not maintainable. The management has also denied the employer employee relationship between the management and the workman.

On this rival pleading the following issues were framed for adjudication.

1. Whether there existed any relationship as employer and employee between the management and the claimant.
2. As in terms of reference.

The workman examined himself as WW1 and adduced evidence exactly in the line of the claim statement. No document was filed on his behalf. On behalf of the management one of its officer testified as WW1 who filed a document which is in the nature of the resolution authorizing the witness to give evidence.

During cross examination the workman was asked if he has any document to prove his claim that he was working as a Cable joinder w.e.f. 10.01.1996 and getting salary from the management. To this question the witness answered in negative. Besides the oral evidence there is absolutely no documentary evidence on record to hold that at any point of time the claimant was working for the management BSNL as a Cable Joinder.

There is also no evidence at all to show that on 23.08.2010 he was illegally terminated by the management. No document has been placed on record by the claimant to show that till that date he was signing the attendance register or getting monthly remuneration from the management.

That being the evidence on record it is held that the claimant has failed to establish his relationship with the management as the employee of the later, that he was getting salary from the management and thus, his service was terminated illegally. In view of the evidence the claim of the workman fails and the reference is answered against him. Hence, ordered.

ORDER

The reference be and the same is answered against the workman and it is held that his service was not illegally terminated by the management BSNL w.e.f 23.08.2010. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

29th July, 2019.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1713.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, फरीदाबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 69/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल-40012/45/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1713**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 69/2012.) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager ,BSNL ,Faridabad & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-40012/45/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 69/2012

Date of Passing Award- 29th July, 2019

Between:

Shri Pappu,
S/o Shri Bazr Lal,
R/o. H. No.-155, Rahul Colony,
NIT, Faridabad … Workman

Versus

The General Manager
BSNL Sector- 15,
Faridabad. … Management

Appearances:-

Claimant in person, (A/R) : For the Workman

Shri Deepak Thukral, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 40012/45/2011 (IR(DU) dated 25.01.2012 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of BSNL, Faridabad in terminating the service of Shri Pappu S/o Shri Bazr Lal, Ex-cable Jointer w.e.f. 23.08.2010 is legal and justified? What relief the workman is entitled to?''

The claimant filed the claim petition sating therein that he joined the management BSNL on 10.01.2005 as Cable Joinder on a monthly salary of Rs. 17,00/- which was revised time to time and his last drawn monthly salary was 3,500/-. When he was discharging his duties with utmost perfection, raised his grievance before the management for not getting the facilities of PF, ESI, Holiday leave, bonus, over time dues etc. Being annoyed on 23.08.2010 the management terminated his service illegally and at the time of termination no notice, notice pay, retrenchment compensation, was paid. All the efforts made by the workman for his reinstatement failed. He was not even paid the duty pay for the month of August 2010. Finding no other way he served a demand notice on the management to which the management gave a reply denying all the contention raised by the workman. He then raised a dispute before the Labour Commissioner where a conciliation was taken up but no result could be achieved. Reference being made by the appropriate Authority the matter is pending for adjudication.

The respondent/management appeared and filed WS denying the stand taken by the claimant/workman. It has been stated that the management has sufficient staff of Group-C or Group-D and thus, the department do not engage daily wager for work. If any petty work is required to be done, the same is executed by the contractors engaged by the management. While furnishing the list of contractors engaged by the management during the period between 1999 to 2007 the management took a plea that the workman might have been engaged by the contractor and his claim against the management is not maintainable. The management has also denied the employer employee relationship between the management and the workman.

On this rival pleading the following issues were framed for adjudication.

1. Whether there existed any relationship as employer and employee between the management and the claimant.
2. As in terms of reference.

The workman examined himself as WW1 and adduced evidence exactly in the line of the claim statement. No document was filed on his behalf. On behalf of the management one of its officer testified as WW1 who filed a document which is in the nature of the resolution authorizing the witness to give evidence.

During cross examination the workman was asked if he has any document to prove his claim that he was working as a Cable Joinder w.e.f. 10.01.2005 and getting salary from the management. To this question the witness answered in negative. Besides the oral evidence there is absolutely no documentary evidence on record to hold that at any point of time the claimant was working for the management BSNL as a Cable Joinder.

There is also no evidence at all to show that on 23.08.2010 he was illegally terminated by the management. No document has been placed on record by the claimant to show that till that date he was signing the attendance register or getting monthly remuneration from the management.

That being the evidence on record it is held that the claimant has failed to establish his relationship with the management as the employee of the later, that he was getting salary from the management and thus, his service was terminated illegally. In view of the evidence the claim of the workman fails and the reference is answered against him. Hence, ordered.

ORDER

The reference be and the same is answered against the workman and it is held that his service was not illegally terminated by the management BSNL w.e.f 23.08.2010. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

29th July, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1714.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, फरीदाबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 05/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुए थे।

[सं. एल-40012/58/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1714**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2012) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, BSNL, Faridabad & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-40012/58/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 05/2012

Date of Passing Award- 29th July, 2019

Between:

Shri Amar Bahadur,
S/o Shri Purvidin,
R/o. H. No.- 155, Gali No.1, Rahul Colony,
NIT, Faridabad. … Workman

Versus

The General Manager
BSNL Sector- 15,
Faridabad. …Management

Appearances:-

Claimant in person, (A/R) : For the Workman.

Shri Deepak Thukral, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 40012/58/2011 (IR(DU) dated 02.12.2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of BSNL, Faridabad in terminating the service of Shri Amar Bahadur S/o Shri Purvidin, Ex-Cable Jointer w.e.f. 23.08.2010 is legal and justified? What relief the workman is entitled to?''

The claimant filed the claim petition sating therein that he joined the management BSNL on 02.03.2001 as Cable Joinder on a monthly salary of Rs. 1600/- which was revised time to time and his last drawn monthly salary was 3300/-. When he was discharging his duties with utmost perfection, raised his grievance before the management for not getting the facilities of PF, ESI, Holiday leave, bonus, over time dues etc. Being annoyed on 23.08.2010 the management terminated his service illegally and at the time of termination no notice, notice pay, retrenchment compensation, was paid. All the efforts made by the workman for his reinstatement failed. He was not even paid the duty pay for the month of August 2010. Finding no other way he served a demand notice on the management to which the management gave a reply denying all the contention raised by the workman. He then raised a dispute before the Labour Commissioner where a conciliation was taken up but no result could be achieved. Reference being made by the appropriate Authority the matter is pending for adjudication.

The respondent/management appeared and filed WS denying the stand taken by the claimant/workman. It has been stated that the management has sufficient staff of Group-C or Group-D and thus, the department do not engage daily wager for work. If any petty work is required to be done, the same is executed by the contractors engaged by the management. While furnishing the list of contractors engaged by the management during the period between 1999 to 2007 the management took a plea that the workman might have been engaged by the contractor and his claim against the management is not maintainable. The management has also denied the employer employee relationship between the management and the workman.

On this rival pleading the following issues were framed for adjudication.

1. Whether there existed any relationship as employer and employee between the management and the claimant.
2. As in terms of reference.

The workman examined himself as WW1 and adduced evidence exactly in the line of the claim statement. No document was filed on his behalf. On behalf of the management one of its officer testified as WW1 who filed a document which is in the nature of the resolution authorizing the witness to give evidence.

During cross examination the workman was asked if he has any document to prove his claim that he was working as a Cable joinder w.e.f. 02.03.2001 and getting salary from the management. To this question the witness answered in negative. Besides the oral evidence there is absolutely no documentary evidence on record to hold that at any point of time the claimant was working for the management BSNL as a Cable Joinder.

There is also no evidence at all to show that on 23.08.2010 he was illegally terminated by the management. No document has been placed on record by the claimant to show that till that date he was signing the attendance register or getting monthly remuneration from the management.

That being the evidence on record it is held that the claimant has failed to establish his relationship with the management as the employee of the later, that he was getting salary from the management and thus, his service was terminated illegally. In view of the evidence the claim of the workman fails and the reference is answered against him. Hence, ordered.

ORDER

The reference be and the same is answered against the workman and it is held that his service was not illegally terminated by the management BSNL w.e.f 23.08.2010. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

29th July, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1715.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, फरीदाबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 07/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुए थे।

[सं. एल-40012/60/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1715**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2012) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, BSNL, Faridabad & Others, and their workmen which were received by the Central Government on 09.09.2019.

[No. L-40012/60/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 07/2012

Date of Passing Award- 29th July, 2019

Between:

Shri Dinesh Kumar,
S/o Shri Ramdhan,
R/o. H. No.- 279, Gali No.-3, Rahul Colony,
NIT, Faridabad. … Workman

Versus

The General Manager
BSNL Sector- 15,
Faridabad. …Management

Appearances:-

Claimant in person, (A/R) : For the Workman.

Shri Deepak Thukral, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 40012/60/2011 (IR(DU) dated 02.12.2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of BSNL, Faridabad in terminating the service of Shri Dinesh Kumar S/o Shri Ramdhan, Ex-Cable Jointer w.e.f. 23.08.2010 is legal and justified? What relief the workman is entitled to?''

The claimant filed the claim petition sating therein that he joined the management BSNL on 15.01.2000 as Cable Joinder on a monthly salary of Rs. 1700/- which was revised time to time and his last drawn monthly salary was 3500/-. When he was discharging his duties with utmost perfection, raised his grievance before the management for not getting the facilities of PF, ESI, Holiday leave, bonus, over time dues etc. Being annoyed on 23.08.2010 the management terminated his service illegally and at the time of termination no notice, notice pay, retrenchment compensation, was paid. All the efforts made by the workman for his reinstatement failed. He was not even paid the duty pay for the month of August 2010. Finding no other way he served a demand notice on the management to which the management gave a reply denying all the contention raised by the workman. He then raised a dispute before the Labour Commissioner where a conciliation was taken up but no result could be achieved. Reference being made by the appropriate Authority the matter is pending for adjudication.

The respondent/management appeared and filed WS denying the stand taken by the claimant/workman. It has been stated that the management has sufficient staff of Group-C or Group-D and thus, the department do not engage daily wager for work. If any petty work is required to be done, the same is executed by the contractors engaged by the management. While furnishing the list of contractors engaged by the management during the period between 1999 to 2007 the management took a plea that the workman might have been engaged by the contractor and his claim against the management is not maintainable. The management has also denied the employer employee relationship between the management and the workman.

On this rival pleading the following issues were framed for adjudication.

1. Whether there existed any relationship as employer and employee between the management and the claimant.
2. As in terms of reference.

The workman examined himself as WW1 and adduced evidence exactly in the line of the claim statement. No document was filed on his behalf. On behalf of the management one of its officer testified as WW1 who filed a document which is in the nature of the resolution authorizing the witness to give evidence.

During cross examination the workman was asked if he has any document to prove his claim that he was working as a Cable joinder w.e.f. 15.01.2000 and getting salary from the management. To this question the witness answered in negative. Besides the oral evidence there is absolutely no documentary evidence on record to hold that at any point of time the claimant was working for the management BSNL as a Cable Joinder.

There is also no evidence at all to show that on 23.08.2010 he was illegally terminated by the management. No document has been placed on record by the claimant to show that till that date he was signing the attendance register or getting monthly remuneration from the management.

That being the evidence on record it is held that the claimant has failed to establish his relationship with the management as the employee of the later, that he was getting salary from the management and thus, his service was terminated illegally. In view of the evidence the claim of the workman fails and the reference is answered against him. Hence, ordered.

ORDER

The reference be and the same is answered against the workman and it is held that his service was not illegally terminated by the management BSNL w.e.f 23.08.2010. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

29th July, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1716.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, एचआर, बीएपी/बीएचईएल तिरुचिरापल्ली, चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 84/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.09.2019 को प्राप्त हुआ था।

[सं. एल-42011/104/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1716**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2017) of the Central Government Industrial Tribunal-cum-Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, HR, BAP/BHEL Tiruchirappalli, Chennai & Others, and their workmen which were received by the Central Government on 03.09.2019.

[No. L-42011/104/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

I.D. No. 84/2017

Present : DIPTI MOHAPATRA, LL.M. PRESIDING OFFICER
Monday, the 26th August, 2019

Sh. M. Mohammed Saleem
General Secretary
Engineers/Officers Union
Bharat Heavy Electricals Ltd.
Tiruchirappalli - 620014 : 1st Party/Petitioner

AND

The General Manager
HR, BAP/BHEL
Tiruchirappalli - 620014

Appearance:

For the 1st Party/Petitioner : M/s. R. Sivakumar, Advocates
For the 2nd Party/Management : Sh. A.V. Arun, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/104/2017(IR(DU) dated 29.08.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the management of M/s. BHEL/Trichy is justified in fixing inappropriate Pay Scale during Wage Revision? If not, to what relief the members of the Engineers/Officers Union is entitled to?*"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 84/2017 and notices were issued to both the parties for their appearance fixing the case to 29.09.2017. Since then, the case is dragged for such a long period till 13.08.2019 intervening almost adjournments i.e. 3 adjournments in the year 2017, 6 adjournments in the year 2018, and almost 9 adjournments in the year 2019 i.e. 11.02.2019, 19.02.2019, 19.03.2019, 29.04.2019, 10.06.2019, 15.07.2019, 05.08.2019, 13.08.2019 and 26.08.2019.

It appears even if sufficient opportunities were made available to the petitioner, the petitioner did not turn up. Thus, the Tribunal is not in a position to adjudicate the dispute as referred by the appropriate government due to default in appearance and participation of the petitioner. On the other hand, in the peculiar circumstance, it deems there is non-existence of any Industrial Dispute for adjudication and therefore the Petitioner is not interested to participate in the proceeding.

Hence the Final Order.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 26TH August, 2019)

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1717.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, भारतीय प्रौद्योगिकी संस्थान (मद्रास), चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 65/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.09.2019को प्राप्त हुआ था।

[सं. एल-42012/04/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1717.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2017) of the Central Government Industrial Tribunal-cum-Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Indian Institute of Technology (Madras), Chennai & Others, and their workmen which were received by the Central Government on 03.09.2019.

[No. L-42012/04/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, CHENNAI

I.D. No. 65/2017

Present : DIPTI MOHAPATRA, LL.M. PRESIDING OFFICER
Monday, the 26th August, 2019

Sh. C. Suresh
S/o. Chinna Thambi
No. 14/17, Nadar Street
Jegannathapuram
Velachery
Chennai – 600 042 : 1st Party/Petitioner

AND

The Director
Indian Institute of Technology (Madras)
Chennai – 600 036

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/04/2017IR(DU) dated 02.06.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the demand of Sh. C. Suresh, in seeking reinstatement with back wages in the Indian Institute of Technology (Madras), Chennai is legal and justified? If not, to what relief the workman is entitled to?"*

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 65/2017 and notices were issued to both the parties for their appearance fixing the case to 10.07.2017. Since then, the case is dragged for such a long period till 29.07.2019 intervening almost 18 adjournments i.e. 6 adjournments in the year

2017, 6 adjournments in the year 2018, and almost 5 adjournments in the year 2019 i.e. 25.02.2019, 06.05.2019, 18.06.2019, 29.07.2019, and 26.08.2019.

It appears even if sufficient opportunities were made available to the petitioner, the petitioner did not turn up. Thus, the Tribunal is not in a position to adjudicate the dispute as referred by the appropriate Government due to default in appearance and participation of the petitioner. On the other hand, in the peculiar circumstance, it deems there is non-existence of any Industrial Dispute for adjudication and therefore the Petitioner is not interested to participate in the proceeding.

Hence the Final Order.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 26TH August, 2019)

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1718.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षक। डाकघर, थेनी चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 92/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.08.2019 को प्राप्त हुए थे ।

[सं. एल-40012/16/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1718**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 92/2017) of the Central Government Industrial Tribunal-cum-Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Supdt. of Post Offices, Theni Chennai & Others, and their workmen which were received by the Central Government on 06.08.2019.

[No. L-40012/16/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Present : DIPTI MOHAPATRA, LL.M. PRESIDING OFFICER

I.D. No. 92/2017
Monday, the 29th July,2019

Sri G. Mohanraj
S/o Govindan
Ward No. 5
Melapirattur Colony
Highways Posts
Theni District
Theni - 625519 : 1st Party/Petitioner

AND

1. The Supdt. of Post Offices Theni Division, Theni Theni – 625531	:	2nd Party/Respondent-1
2. The Inspector Posts Bodinayakar Head Post Offices Bodinayakar, Theni – 625531	:	2nd Party/Respondent-2
3. The Post Master Bodinayakar Head Post Offices Bodimayakar, Theni – 625531	:	2nd Party/Respondent-3
4. The Sub Post Master Highways Sub-Office Theni-625530	:	2nd Party/Respondent-4

Appearance:

For the 1st Party/Petitioner	:	None
For the 2nd Party/Management	:	Sri J. Alaguraja, Authorized, Representative

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/16/2016 IR(DU) dtd. 24.07.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the Senior Superintendent of Post Offices, Theni Division, Theni – 625531 in terminating service of Shri. G. Mohanraj from Gramin Dak Sevak Branch Post Master/Mali Deliverer, Megamali Branch, Highways Sub Office with effect from 17.10.2014 is legal and justified ? If not, to what relief the workman is entitled to?"*

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 92/2017 and notices were issued to both the parties for their appearance fixing the case to 02.01.2018. Since then, the case is dragged for such a long period till 23.07.2019 intervening almost 12 adjournments i.e. 7 adjournments in the year 2018, 5 adjournments in the year 2019.

It appears even if sufficient opportunities were made available to the petitioner, did not turn up. Thus, the Tribunal is not in a position to adjudicate the dispute as referred by the appropriate government due default in appearance and participation of the petitioner. On the other hand, in the peculiar circumstance, it deems there is non-existence of any Industrial Dispute for adjudication and therefore the Petitioner is not interested to participate in the proceeding.

Hence the Final Order.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 29TH July, 2019)

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1719.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य पोस्ट मास्टर जनरल, राज. सर्किल, जिला जयपुर। जयपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 52/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.08.2019 को प्राप्त हुए थे।

[सं. एल-40012/188/2002-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1719**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52 /2006) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the Chief Post Master General Jaipur, & Others, and their workmen which were received by the Central Government on 07.08.2019.

[No. L-40012/188/2002-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 52 / 2006

राधामोहन चतुर्वेदी
पीठासीन अधिकारी

रेफरेन्स नं. L-40012/188/2002–IR(DU) दिनांक 11/05/2006

रामप्रसाद शर्मा पुत्र श्री बंशीधर शर्मा,
निवासी जयसिंहपुरा, भांकरोटा, जयपुर।

बनाम

1. मुख्य पोस्ट मास्टर जनरल, राज. सर्किल, जिला जयपुर।
2. सीनियर अधीक्षक, डाकघर, भारतीय डाक विभाग, जयपुर।
3. प्रवर अधीक्षक, डाकघर जयपुर सिटी, मण्डल, जयपुर।

प्रार्थी की तरफ से : श्री अनूप अग्रवाल – प्रतिनिधि
अप्रार्थी की तरफ से : श्री मुकेश मीणा –प्रतिनिधि

: अधिनिर्णय :

दिनांक : 05. 07. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 11.5.2006 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (d) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया :

"Whether the action of the management the Chief Post Master General, Rajasthan Circle, Jaipur/Senior Superintendent, Post Offices, Jaipur and Senior Superintendent, Post Office, Jaipur City, Jaipur in terminating

the services of Shri Ram Prasad Sharma S/o Shri Bansidhar Sharma w.e.f. 25.2.202 is legal and justified? If not, what relief the workman is entitled to?"

2. उपयुर्क्त संदर्भित विवाद प्राप्त होने पर अधिकरण द्वारा पक्षकारों को आहूत किया गया और प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. इस निर्देश के अनुपालन में प्रार्थी ने दावे का अभिकथन प्रस्तुत किया। प्रार्थी का कथन है कि विपक्षीगण ने प्रार्थी को डाकघर जयसिंहपुरा, भांकरोटा में डाकपाल के पद पर डाक वितरण करने हेतु नियुक्ति दी। प्रार्थी ने दिनांक 27.2.99 को अपना कार्यभार संभाला। प्रार्थी दिनांक 25.2.2002 तक विपक्षी के अधीन कार्य करता रहा, किन्तु दिनांक 25.2.2002 को दोपहर बाद से प्रार्थी को कार्य पर आने से मना कर दिया। प्रार्थी को नियुक्ति के समय वेतन व खर्चे सहित 1682 रूपये मिलते थे और सेवामुक्ति के समय 1976 रू. प्रतिदिन वेतन दिया जाता था। प्रार्थी ने एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक नियमित रूप से विपक्षी के अधीन कार्य किया है। विपक्षी ने सेवामुक्ति के पूर्व अधिनियम की धारा 25 (एफ) के अन्तर्गत नोटिस अथवा नोटिस वेतन अथवा क्षतिपूर्ति राशि का भुगतान प्रार्थी को नहीं किया। प्रार्थी से कनिष्ठ कर्मचारियों को कार्य पर रख विपक्षीगण ने धारा 25 (जी) अधिनियम का उल्लंघन किया। दुभार्वनापूर्वक विपक्षी ने प्रार्थी को स्थायी न करने के उद्देश्य से सेवामुक्त किया है जो अवैध है। अतः सेवामुक्ति दिनांक 25.2.2002 को अवैध घोषित कर प्रार्थी को निरन्तर सेवा में मानते हुए समस्त परिलाभ ब्याज सहित दिलाये जावें।

4. दिनांक 10.6.2010 को विपक्षीगण ने प्रतिउत्तर प्रस्तुत करते हुए यह कहा है कि प्रार्थी द्वारा पूर्व में भी सेवामुक्त न किये जाने और नियमित मानने हेतु केन्द्रीय प्रशासनिक अधिकरण पीठ जयपुर के समक्ष ओ.ए. संख्या 71/2001 प्रस्तुत किया गया था। जिसे सारहीन मानते हुए 7.2.2002 को निरस्त कर दिया गया था। वास्तविकता यह है कि ग्रामीण डाक सेवक शाखा डाकघर जयसिंहपुरा बास के पोस्टमेन के पद पर पदोन्नत होने के कारण शाखा डाकपाल पद रिक्त हो गया। रिक्त पद पर कार्यवाहक व्यवस्था हेतु पदोन्नत डाकपाल द्वारा प्रार्थी को 27.2.99 से नियमित नियुक्ति होने तक की अवधि के लिये लगाया गया । प्रार्थी की नियुक्ति की यह शर्त थी कि उसे बिना किसी नोटिस एवं कारण बताये सेवासमाप्त की जा सकेगी। प्रार्थी ने ये शर्तें स्वीकार कर नियुक्ति ली। शाखा डाकघर में नियमित नियुक्ति होते ही प्रार्थी की सेवामुक्ति आरोपित शर्त के अनुरूप होनी थी। प्रार्थी की सेवामुक्ति अधिनियम की धारा 2 (ओओ) के अन्तर्गत छंटनी की श्रेणी में नहीं आती। ग्रामीण डाक सेवकों की वरिष्ठता सूची से प्रार्थी का कोई सरोकार नहीं है। इस प्रकार प्रार्थी की सेवामुक्ति पूर्णतः नियमानुसार है। अतः दावा निरस्त किया जावें।

5. प्रार्थी की ओर से विपक्षी के प्रतिउत्तर का अतिरिक्त कथन प्रस्तुत करते हुए खण्डन किया गया और उसे पुनः सेवा में बहाल करने का निवेदन किया गया।

6. प्रार्थी ने अपने साक्ष्य में स्वंय प्रार्थी रामप्रसाद को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श–डब्ल्यू 1 एवं डब्ल्यू 2 प्रलेख प्रदर्शित किये।

7. विपक्षीगण ने अपने साक्ष्य में श्री पी.एल.सोमवंशी प्रवर अधीक्षक को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श–आर 1 और आर. 2 प्रलेख प्रदर्शित किये। दिनांक 17.6.19 को मैंने उभयपक्ष के परस्पर विरोधी तर्क सुने तथा साक्ष्य का सुसंगत विधि के सन्दर्भ में विवेचन किया।

8. प्रार्थी के प्रतिनिधि का यह तर्क है कि प्रार्थी और विपक्षीगण के मध्य कर्मकार नियोजक का सम्बन्ध है। दिनांक 25.2.2002 को प्रार्थी की सेवा अकारण समाप्त कर दी गई। प्रार्थी ने विपक्षी के अधीन एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक कार्य किया है। जिसे विपक्षीगण भी मानते है किन्तु सेवामुक्ति को इस आधार पर वैध कहा जा रहा है कि यह नियमित कर्मचारी के नियुक्त होने तक ही थी जबकि विपक्षी द्वारा कोई नियमित नियुक्ति इस रिक्त पद पर नहीं की गई और न हीं कोई नियुक्ति प्रक्रिया अपनायी गयी वरन् रिडिप्लोयमेन्ट अर्थात किसी अन्य व्यक्ति के स्थानान्तरण द्वारा रिक्त पद की पूर्ति कर दी गयी ताकि प्रार्थी को स्थायी घोषित ना करना पडे। पद का इस प्रकार भरना नियमित नियुक्ति नहीं है इसलिये यह नियुक्ति नियमित नियुक्ति की शर्तों के अनुरूप नहीं है। अतः सेवामुक्ति को अवैध घोषित किया जावें।

9. विपक्षी के प्रतिनिधि ने अपने तर्कों में प्रार्थी को पूर्णतः अस्थायी रूप से 90 दिनों के लिये या नियमित नियुक्ति होने तक सीमित अवधी के लिये जो भी पहले हो नियुक्त किया जाना स्वीकार किया। उनका यह तर्क है कि प्रार्थी ने प्रदर्श आर.1 नियुक्ति

आदेश में वर्णित यह शर्त स्वीकार कर ली थी कि उसकी सेवा को बिना कारण बताये अथवा नोटिस दिये समाप्त किया जा सकेगा। विपक्षी द्वारा नियुक्ति प्रक्रिया अपनाते हुए नवीन रूप से नियुक्ति की जावें अथवा पहले से नियमित रूप से नियुक्त किसी कर्मचारी को स्थानान्तरित कर लगाया जावें, यह विपक्षी का विवेकाधिकार है जो जन– धन की बचत हेतु विपक्षी ने अपनी नीति–निर्धारण के अन्तर्गत किया। उनका यह भी तर्क है कि प्रार्थी ''कर्मकार'' की परिभाषा में ही नहीं आता क्योंकि इस पद की सेवासमाप्ति, शास्ति आदि के सम्बन्ध में पृथक से नियम बने हुए है। उनका यह भी तर्क है कि प्रार्थी की सेवामुक्ति अधिनियम के प्रावधानों के अन्तर्गत छंटनी नहीं है। इसलिये छंटनी सम्बन्धी अनिवार्यताओं का अनुपालन भी आवश्यक नहीं है। उन्होनें अपने तर्क के सम्बन्ध में निम्नांकित न्यायायिक दृष्टान्त प्रस्तुत किये :–

(1) सब डिविजनल इन्सपैक्टर ऑफ पोस्ट, वैकन व अन्य बनाम थैयम जोसेफ आदि 1996 ए.आई.आर. 1271 (सुप्रिम कोर्ट)

10. मैनें उभयपक्ष के तर्कों एवं विधिक दृष्टान्त में पारित विधि पर साक्ष्य के सन्दर्भ में मनन किया। इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुआ है :–

''क्या दिनांक 25.2.2002 को विपक्षीगण द्वारा की गई प्रार्थी की सेवासमाप्ति छंटनी है जो अधिनियम की धारा 25 एफ के आज्ञापक प्रावधानों की अनुपालना न किये जाने से अवैध है।''

11. अधिनियम की धारा 2 (ओओ) के अन्तर्गत छंटनी से किसी कर्मकार की सेवा का, नियोजक द्वारा ऐसा प्रर्यावसान अभिप्रेत है जो अनुशासनिक कार्यवाही के रूप में दिये गये दण्ड से भिन्न किसी भी कारण किया गया हो। किन्तु ''छंटनी'' के अपवाद स्वरूप उपधारा (बीबी) के अन्तर्गत सुसंगत प्रावधान किया गया है। जो इस प्रकार हैः–

''यदि नियोजक व कर्मकार के बीच हुई नियोजन संविदा समाप्त हो जावें तथा उसका नवीनीकरण न हो अथवा नियोजन संविदा में उस निमित्त अन्तर्विष्ट किसी अनुबन्ध के अधीन संविदा का प्रर्यावसान किया गया हो, तो ऐसा सेवा पर्यावसान छंटनी नहीं होगा।''

12. अधिनियम की धारा 2 (ओओ) (बीबी) व धारा 25 एफ के प्रावधानों के प्रर्वतन हेतु सर्वप्रथम प्रार्थी का ''कर्मकार'' होना एक पूर्ववर्ती शर्त है। इसलिये प्रार्थी के ''कर्मकार'' होने के सम्बन्ध में विपक्षी द्वारा किया गया आक्षेप प्रस्तुत किये गये न्यायिक दृष्टान्त में पारित विधि के प्रकाश में परिक्षणीय है। माननीय उच्चतम न्यायालय ने सब डिविजनल इन्सपेक्टर ऑफ पोस्ट वैकन व अन्य बनाम थैयम जोसेफ आदि के निर्णय में ई.डी.बी.पी.एम. (एक्सट्रा डिपार्टमेन्टल ब्रान्च पोस्ट मास्टर) के पद पर नियुक्त व्यक्ति को ''कर्मकार'' की श्रेणी में न मानते हुए यह कहा है कि ई.डी.बी.पी.एम. के पद पर नियुक्ति–पद्धति, सेवा की दशायें, नियन्त्रित करने वाले आचरण नियम एवं वेतनमान सम्बन्धित नियम, संविधिक विनियमों द्वारा अधिशासित होते हैं– सर्वोच्च न्यायालय द्वारा यह विधि स्थापित कर दी गई है कि ये कर्मचारी सिविल सेवक हैं, जो उनके आचरण नियमों से ही विनियमित होते है। इसलिये इस विधि के आवश्यक प्रभाव के कारण ये कर्मचारी ''कर्मकार'' के वर्ग के नहीं है जो औद्योगिक विवाद अधिनियम के प्रावधानों को आकृष्ट करें।

13. प्रार्थी के प्रतिनिधि द्वारा ऐसी कोई मार्गदर्शक विधि मेरे समक्ष प्रस्तुत नहीं की गई जो माननीय उच्चतम न्यायालय के उपरोक्त निणर्य में पारित अधिमत के विपरीत कोई दिशा निर्देश दें। इस निर्णय के प्रकाश में प्रार्थी चूंकि ''कर्मकार'' ही नहीं है इसलिये अधिनियम की धारा 25 (एफ) एवं (जी) के अन्तर्गत उपबंधित प्रावधान प्रार्थी के सम्बन्ध में आकर्षित ही नहीं होते है।

14. प्रार्थी के प्रतिनिधि का यह तर्क है कि प्रदर्श आर. 1 नियुक्ति पत्र में वर्णित दशायें यद्धपि प्रार्थी द्वारा स्वीकृत हैं, किन्तु प्रार्थी की सेवा समाप्ति का जो आधार विपक्षीगण ने नियमित कर्मचारी की नियुक्ति होना बताया है यह किसी प्रकार प्रमाणित नहीं होता है इसलिये विपक्षी द्वारा की गई सेवासमाप्ति अवैध है।

15. मैनें इस सम्बन्ध में प्रदर्श आर.1 केन्द्रीय प्रशासनिक अधिकरण के निर्णय में वर्णित तथ्यों परिशीलन किया। इन निर्णय में वर्णित तथ्यों को प्रार्थी ने भी गलत/असंगत नहीं बताया है। न ही इस निर्णय को किसी सक्षम न्यायालय में चुनौति दी है। वर्णित तथ्यों के अनुसार जयसिंहपुरा बास में ई.डी.बी.पी.एम. के पद पर नियुक्त रामचन्द्र मीणा के पदोन्नत हो जाने पर यह पद रिक्त हो गया था तथा प्रार्थी को इस पद पर रामचन्द्र मीणा की जोखिम एवं उत्तरदायित्व पर अस्थायी रूप से रखा गया था। प्रार्थी के नियुक्ति पत्र प्रदर्श आर.1 में यह स्पष्ट रूप से अंकित किया गया कि उसकी अस्थायी नियुक्ति किसी भी समय बिना कोई कारण बताये एवं बिना कोई नोटिस दिये समापन हो सकती है। प्रार्थी को यह भी बता दिया गया था कि उसकी सेवा, नियमित नियुक्ति

कर दिये जाने पर समाप्त हो जायेगी। प्रार्थी एतदर्थ किसी अन्य पद पर नियुक्ति हेतु कोई दावा नहीं करेगा। ''जहॉ तक ''नियमित नियुक्ति'' शब्दावली के अर्थान्वयन का प्रश्न है। मेरे अभिमत से इस नियुक्ति से अभिप्राय नियमित रूप से नियुक्त किसी व्यक्ति द्वारा किसी रिक्त पद का कार्यभार ग्रहण करने से है। ''नियमित नियुक्ति'' शब्दावली का तात्पर्य यह कदापि नहीं है कि उस पद हेतु नवीन रूप से कोई नियुक्ति प्रक्रिया अपनायी जावें, जिसका अनुपालन करने के पश्चात ही किसी व्यक्ति को नियुक्त किया जावें। यदि विभाग के पास नियमित रूप से नियुक्त ई.डी.बी.पी.एम. अधिशेष रूप में किसी अन्य कार्यालय पर उपलब्ध रहे हों, तो उन्हें अनदेखा कर नवीन नियुक्ति हेतु प्रक्रिया अपनाने की कोई आवश्यकता युक्तियुक्त रूप से उत्पन्न नहीं होती है। विपक्षीगण द्वारा यह प्रक्रिया यद्यपि प्रारम्भ कर दी गई थी, किन्तु इसी बीच मुख्य महाडाकपाल जयपुर के कार्यालय में आयोजित सम्भागीय प्रमुखों की बैठक में यह निर्णय लिया गया कि रिक्त पदों को ऐसे अन्य शाखा कार्यालयों जो भारी घाटे में चलते है, में उपलब्ध ई. डी.बी.पी.एम. के पुनः पदस्थापन (रिडिपलोयमेन्ट) द्वारा पूर्त कर दिया जावे ताकि धनराशि की बचत हो सके। इस निर्णय के अनुसरण में अस्थायी रूप से नियुक्त प्रार्थी को, उसका कार्यभार श्री रूपनारायण मीणा को सौपने के निर्देश देते हुए कार्यमुक्त कर दिया गया। यह तथ्य विवादित नहीं है कि प्रार्थी की अस्थायी नियुक्ति बिना किसी चयन प्रक्रिया को अपनाये अस्थायी प्रबन्ध के रूप में ही की गई थी, तथा प्रार्थी ने इस पद पर 240 दिन से अधिक की सेवा भी पूर्ण कर ली थी। किन्तु, प्रार्थी की नियुक्ति अस्थायी रूप से एक निश्चित अवधि जो कि नियमित–नियुक्ति होने तक ही सशर्त थी। प्रार्थी को स्पष्ट रूप से सूचित कर दिया गया था कि नियमित नियुक्ति होते ही उसकी सेवासमाप्त हो जायेगी। प्रार्थी ने भी इस शर्त को स्वीकार करते हुए सेवा प्रारम्भ की थी। इस प्रकार यह स्थिति अधिनियम की धारा 2 (ओओ) (बी. बी.) के अन्तर्गत उपबन्धित अपवादात्मक प्रमाणित होती है। माननीय सर्वोच्च न्यायालय ने पंजाब इलेक्ट्रीसिटी बोर्ड बनाम दरबारा सिंह ए.आई.आर. 2006 एस.सी. 327 (स्वंय अधिकरण द्वारा) के निर्णय में समान तथ्यों पर अधिमत व्यक्त करते हुए कहा है कि जब कर्मकार को सशर्त रूप से विशिष्ट अवधि के लिये नियमित नियुक्ति तक सेवा में रखा गया हो तो कर्मकार की सेवासमाप्ति अधिनियम की धारा 2 (ओओ) (बी.बी.) के अन्तर्गत ''छंटनी'' नहीं कहा जा सकती।

16. इस विधिक एवं तथ्यात्मक परिदृश्य में दिनांक 25.2.2002 को विपक्षीगण द्वारा की गई प्रार्थी की सेवासमाप्ति छंटनी की परिभाषा में नहीं आती है और न ही प्रार्थी ''कर्मकार'' होना प्रमाणित हुआ है जिसे अधिनियम की धारा 25 (एफ) एवं (जी) के प्रावधानों का संरक्षण दिया जा सके।

17. इसलिये श्रम मन्त्रालय भारत सरकार द्वारा संदर्भित विवाद का अधिनिणर्यन करते हुए विपक्षी द्वारा दिनांक 25.2.2002 को की गई प्रार्थी की सेवासमाप्ति वैध एवं न्यायोचित प्रमाणित होती है तथा प्रार्थी किसी अनुतोष प्राप्ति का अधिकारी नहीं है।

आदेश

18. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

19. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1720.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स **प्रधान महाप्रबन्धक, दूरसंचार, भारत संचार निगम लि., जयपुर।** और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 93/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.08.2019 को प्राप्त हुए थे।

[सं. एल-40012/35/2006-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1720**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93 /2006) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the Chief General Manger, BSNL Jaipur ,& Others, and their workmen which were received by the Central Government on 07.08.2019.

[No. L-40012/35/2006-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 93 / 2006

राधामोहन चतुर्वेदी

पीठासीन अधिकारी

रेफरेन्स नं. L-40012/35/2006–IR(DU) दिनांक 01/11/2006

कान्ता देवी सारवान पत्नी श्री हरि सिंह सारवान
जवाहर कॉलोनी, रामगढ रोड़,
महुवा, जिला दौसा।

v/s

1. प्रधान महाप्रबन्धक, दूरसंचार,
भारत संचार निगम लि.,
राजस्थान टेलीकाम
जिला, जयपुर ।

2. मण्डल अभियन्ता, दूरसंचार
भारत संचार निगम लि.,
दौसा।

3. उप मण्डल अधिकारी (टी).,
भारत संचार निगम लि.,
महुवा, जिला दौसा ।

प्रार्थी की तरफ से : श्री आर. सी. जैन – प्रतिनिधि

अप्रार्थी की तरफ से : श्री चन्द्रमोहन –प्रतिनिधि

: **अधिनिर्णय** :

दिनांक : 25. 07. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 1.11.2006 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (2ए) 1 (डी) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को संदर्भित किया गया :–

> "Whether the action of the management of SDO(T) Mahuwa, BSNL., in terminating the services of their workman Smt. Kanta Devi Sarwan w.e.f. 1-1-2005 is legal and justified? If not, to what relief the workman is entitled to? "

2. इस सन्दर्भ के प्राप्त होने पर उभयपक्ष को आहूत किया गया तथा प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें। इस निर्देश के अनुपालन में प्रार्थी ने दिनांक 18.3.2010 को अपने दावे का अभिकथन प्रस्तुत किया। प्रार्थी

के अनुसार उसकी नियुक्ति उपमण्डल अधिकारी (टी) भारत संचार निगम लि. महुवा जिला दौसा के अधिन सफाई कर्मचारी के रूप में अगस्त 2000 में हुई थी। दिनांक 31.12.2004 तक उससे कार्य लिया जाता रहा। तत्पश्चात उसे बताया गया कि दिनांक 1.1.2005 से उसे सेवामुक्त कर दिया गया है। सेवामुक्ति का कारण कार्यालय एवं एक्सचेन्ज की सफाई का कार्य किसी ठेकेदार को ठेके पर दे दिया जाना बताया। सेवामुक्ति से पूर्व प्रार्थी को कोई नोटिस नहीं दिया गया और न हीं नोटिस वेतन का भुगतान किया और कोई मुआवजा भी नहीं दिया गया। प्रार्थी को सेवामुक्त किये जाने के बाद नयें श्रमिकों को भी भर्ती किया गया। इस प्रकार विपक्षीगण द्वारा अधिनियम की धारा 25 (एफ) (जी) एवं 25 (एच) तथा नियम 77 व 78 का उल्लंघन किया गया। सेवामुक्ति के उपरान्त से ही प्रार्थी पूर्णतः बेरोजगार है। अतः नियोजक द्वारा दिनांक 1.1.2005 से की गई प्रार्थी की सेवामुक्ति को अवैध घोषित करते हुए प्रार्थी को सेवा में निरन्तरता एवं विगत वेतन व परिलाभों सहित सेवा में पुनः लिया जावें।

3. विपक्षीगण ने अपने प्रतिउत्तर में प्रार्थी के अभिवचनों को अस्वीकार किया। उनका यह कथन है कि प्रार्थी को अगस्त 2000 में सफाई कर्मचारी के रूप में नियुक्त नहीं किया गया। दिनांक 1.1.2005 से सफाई का कार्य ठेके पर दे दिया गया। इससे पूर्व सफाई की जरूरत होने पर यह कार्य सफाई करने वाले से करवाया जाता था और उसे भुगतान फार्म ए.सी.जी.17 पर रसीद लेकर कर दिया जाता था। प्रार्थी ने दिनांक 31.12.2004 के पूर्व सन् 2003 व 04 में जब भी सफाई का कार्य किया तो मात्र 2 घण्टे ही किया। प्रार्थी को कभी नियुक्त नहीं किया गया। इसलिये उसे सेवामुक्त करने का तथ्य भी स्वीकार नहीं है। प्रार्थी महुवा में कई स्थानों पर सफाई कार्य करती रहीं है। अतः दावा सव्यय निरस्त किया जावें।

4. प्रार्थी ने दिनांक 7.12.10 को अप्रार्थी से भुगतान किये गये वेतन की रसीदे उपस्थिति पंजिका तथा रोकड़ बही 1.8.2008 से 31.12.2004 तक की अवधि के प्रस्तुत करवाने का निवेदन किया। विपक्षी ने सशपथ प्रत्युत्तर में यह कहा है कि वर्ष 2003 व 04 में प्रार्थी ने जब भी कार्य किया उसका भुगतान प्रार्थी को ए.सी.जी.17 फार्म पर किया। अभीलेख में खोजने पर जनवरी एवं फरवरी 2004 में कार्य करने सम्बन्धित कुछ वाउचर उपलब्ध हुए हैं, तथा अन्य दस्तावेज काफी तलाश करने पर भी उपलब्ध नहीं हुए।

5. प्रार्थी ने अपने साक्ष्य में स्वंय प्रार्थी कान्तादेवी को परीक्षित किया।

6. विपक्षी ने अपने साक्ष्य में दाताराम मीणा उपमण्डल अधिकारी (फोन्स) को परीक्षित किया तथा प्रलेखीय साक्ष्य में प्रदर्श–एम 1 से प्रदर्श–एम 16 तक प्रलेख प्रदर्शित किये।

7. दिनांक 3.7.2019 को मैंने उभयपक्ष के प्रतिनिधिगण के तर्क सुने। साक्ष्य का परिशीलन किया और विधिक दृष्टान्तों में पारित विधि पर मनन किया। प्रार्थी के प्रतिनिधि का यह तर्क है कि प्रार्थी को सेवा में नियुक्ति देते समय तथा सेवामुक्त करते समय विपक्षी ने कोई लिखित आदेश जारी नहीं किया। प्रार्थी को साप्ताहिक रूप से वेतन भुगतान किया जाता था। विपक्षी ने यह स्वीकार भी किया है कि प्रार्थी को किसी माह 2 हजार तथा किसी माह में 2500 रूपये साप्ताहिक के हिसाब से भुगतान करते थे। दिनांक 1.1.2005 से सफाई कार्य ठेके पर दे दिया गया और प्रार्थी की सेवा समाप्त कर दी गई। विपक्षी से प्रार्थी ने अगस्त 2000 से दिनांक 31.12.2004 तक की अवधि का सुसंगत अभिलेख जैसे उपस्थिति पंजिका, भुगतान वाउचर व रोकड बही आदि प्रस्तुत करवाने का निवेदन किया किन्तु विपक्षी ने उक्त रिकार्ड को आदेशानुसार प्रस्तुत नहीं किया और यह बहाना बनाया कि काफी तलाश करने पर भी पूरा अभिलेख उपलब्ध नहीं हुआ। विपक्षी ने यह तो स्वीकार किया है कि वर्ष 2003 व 2004 में प्रार्थी ने उसके अधीन कार्य किया। लेकिन सम्बन्धित अभिलेख को इस कारण प्रस्तुत नहीं किया कि कहीं वास्तविकता उजागर नहीं हो जावें। यदि विपक्षी सुसंगत अभिलेख प्रस्तुत करते तो प्रार्थी का एक कैलेण्डर वर्ष की अवधि में 240 दिन कार्य करने का तथ्य प्रमाणित हो जाता। प्रार्थी दैनिक वेतनभोगी सफाई कर्मचारी थी। उसके पास कोई अभिलेख नियुक्ति एवं उपस्थिति से सम्बन्धित हो ही नहीं सकता था, इसलिये विपक्षी के विरूद्ध प्रतिकूल उपधारणा करते हुए यह प्रमाणित मानना चाहिये कि प्रार्थी ने सेवामुक्ति के पूर्व एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा विपक्षी के अधीन की। उन्होनें अपने तर्क के सन्दर्भ में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) 2008 (119) एफ.एल.आर. 398 (सुप्रीम कोर्ट) डिवीजनल मैनेजर न्यू इण्डिया एश्योरेन्स कं. लि. बनाम ए. शंकर लिंगम।

(2) 2012 (135) एफ.एल.आर. 847 (राजस्थान उच्च न्यायालय) आराम सैनी बनाम पी.ओ. सीजीआईटी जयपुर।

(3) (2011) 6 (सुप्रीम कोर्ट कैसेज) 584 देवेन्द्र सिंह बनाम म्यूनिसिपल काउन्सिल सानौर

(4) 2005 (3) डब्ल्यू.एल.सी. 430 (राजस्थान उच्च न्यायालय) मैनेजर मैसर्स मित्तल स्टील मैन्युफैक्चरिंग कम्पनी बनाम चोथाराम व अन्य

(5) 2010 लैब आई.सी. 1089 (सुप्रीम कोर्ट) डायरेक्टर फिशरिज टर्मिनल डिवीजन बनाम भीखू भाई मेघाजी भाई चावड़ा।

(6) 2012 लैब आई.सी. 2520 (राजस्थान उच्च न्यायालय) राजस्थान एग्रीकल्चर यूनिवर्सिटी बनाम लक्ष्मण दान व अन्य।

(7) ए.आई.आर. 1968 (सुप्रीम कोर्ट) 1413 गोपाल कृष्णा जी केतकर बनाम मोहम्मद हाजी लतीफ व अन्य।

(8) (2016) 1 (सुप्रीम कोर्ट कैसेज) (एल. एण्ड एस.) 546 गोरीशंकर बनाम स्टेट ऑफ राजस्थान।

(9) 2015 (145) एफ.एल.आर. 184 मैकिनोन मैकेनजी एण्ड कम्पनी लिमिटेड बनाम मैकिनोन एम्पलॉयी यूनियन।

(10) 1996 (II) एल.एल.जे. 1050 मैनेजमेन्ट ऑफ सिल्वर सेण्ड्स बीच रिसोर्ट एवं अन्य बनाम द वर्कमेन सिल्वर सेण्ड्स एम्पलॉयीज यूनियन व अन्य।

8. विपक्षीगण के प्रतिनिधि का यह विरोधी तर्क है कि प्रार्थी को उन्होनें कभी भी सफाई कर्मचारी के पद पर नियुक्ति नहीं दी। जब कभी आकस्मिक रूप से सफाई कार्य की आवश्यकता होती तो प्रार्थी या अन्य किसी व्यक्ति को सफाई कार्य के लिये लगाया जाता था और उसे ए.सी.जी.17 प्रपत्र मे कार्य का उल्लेख करते हुए भुगतान कर रसीद ले ली जाती थी। चूंकि ये भुगतान अलग–अलग समय पर पृथक–पृथक व्यक्तियों को सफाई कार्य की आवश्यकता होने पर किया जाता था इसलिये अगस्त 2000 से 31.12.2004 तक किये गये भुगतान का पूर्ण अभिलेख प्रयास करने पर भी उपलब्ध नहीं हुआ है। इसलिये विपक्षीगण का यह आशय कदापि नहीं समझा जा सकता है कि जानबूझकर उन्होनें अभिलेख प्रस्तुत नहीं किये। एक केलेण्डर वर्ष की अवधि में 240 दिन की सेवा पूर्ण कर लिये जाने का तथ्य प्रमाणित करने का दायित्व प्रार्थी स्वंय पर है। वह इस भार को किसी प्रकार विपक्षी पर अन्तरित नहीं कर सकता है। प्रार्थी ने अपने साक्ष्य से उक्त तथ्य को प्रमाणित नहीं किया है इसलिये प्रार्थी का दावा किसी प्रकार स्वीकार्य्य नहीं है, उन्होनें अपने तर्कों के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किया :–

2008 (2) सुप्रीम कोर्ट कैसेज (1) जी.एम.बी.एस.एन.एल. व अन्य बनाम महेश चन्द्र

9. मैनें उभयपक्ष के परस्पर विरोधी तर्कों प्रस्तुत की गई साक्ष्य एवँ विधिक दृष्टान्तों में प्रतिपादित विधि पर ध्यानपूर्वक मनन किया।

10. इस औद्योगिक विवाद में निम्नांकित बिन्दु विचारणीय उत्पन्न हुए हैं :–

बिन्दु सं. 1 :– क्या प्रार्थी ने अगस्त 2000 से दिनांक 1.1.2005 को की गई सेवामुक्ति के पूर्व एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक विपक्षी के अधीन सेवा की है ?

बिन्दु सं. 2 :– क्या विपक्षी द्वारा दिनांक 1.1.2005 को प्रार्थी को सेवामुक्त किया जाने के पूर्व एक माह का नोटिस विकल्प में नोटिस वेतन तथा छंटनी प्रतिकर का भुगतान नहीं किया गया ?

बिन्दु सं. 3 :– क्या विपक्षी ने प्रार्थी को सेवामुक्त करने के पश्चात प्रार्थी से कनिष्क श्रमिकों को सेवा में रखा और नये श्रमिकों को भी नियोजित किया जिसमें प्रार्थी को वरीयता नहीं दी गई ?

बिन्दु सं. 4 :– अनुतोष ?

11. उभयपक्ष के तर्कों एवं साक्ष्य के विवेचन तथा विधिक दृष्टान्तों में प्रतिपादित विधि पर मनन के उपरान्त प्रत्येक विचारणीय बिन्दु पर निर्णय इस प्रकार है।

बिन्दु सं. 1 :– प्रार्थी कान्ता देवी ने अपने साक्ष्य में यह कहा है कि उसकी नियुक्ति अगस्त 2000 में हुई थी। दिनांक 1.1.2005 से उसे सेवामुक्त कर दिया गया। सेवामुक्ति का कारण सफाई का कार्य ठेके पर दे दिया जाना बताया। प्रार्थी से की गई प्रतिपरीक्षा में उसने कहा है कि उसे कोई लिखित नियुक्ति पत्र नहीं दिया। उसे महीने के महीने वेतन देते थे और हस्ताक्षर करवाते थे। इसके अतिरिक्त अन्य तथ्यों को विपक्षी की और से प्रतिपरीक्षा में कोई चुनौती नहीं दी गई।

12. विपक्षी के साक्षी दाताराम मीणा उपमण्डल अधिकारी (फोन्स) ने अपने सशपथ कथन में यह कहा है कि प्रार्थी ने सन् 2003 एवं 2004 में जब भी सफाई का कार्य किया तो मात्र 2 घण्टे ही कार्य किया। जिसका भुगतान ए.सी.जी. 17 पर कर दिया। अन्य व्यक्तियों से प्रार्थी की भांति सफाई कार्य करवाया गया और ए.सी.जी.17 पर भुगतान किया गया। इसकी रसीदें प्रदर्श–एम 1 से 16 तक है।

13. यह उल्लेखनीय है कि प्रार्थी को समय–समय पर पारिश्रमिक का भुगतान विपक्षी द्वारा किया गया है। साक्षी दाताराम मीणा ने अपने प्रतिपरीक्षण में यह भी कहा है कि प्रार्थी को किसी माह में 2000 रूपये तथा किसी माह में 2500 रूपये देते थे, किन्तु साप्ताहिक के हिसाब से भुगतान किया जाता था। साक्षी के इन कथनों के प्रकाश में यदि विपक्षी द्वारा प्रस्तुत ए.सी.जी.17, रसीदों (जों कि प्रार्थी के सम्बन्ध में हैं) का अवलोकन किया जावें तो यह प्रकट होता है कि प्रार्थी को 16.1.2004 से 14.2.2004 तक की एक माह की अवधि में चार बार पॉच पॉच सौ रूपये राशि का भुगतान किया गया है जबकि साक्षी दाताराम मीणा ने यह भी स्वीकार किया है कि प्रार्थी को किसी माह में 2500 रूपये का भुगतान भी साप्ताहिक रूप से किया जाता था। इस स्थिति में यह सम्भावना निर्मूल नहीं है कि प्रस्तुत की गई 4 ए.सी.जी.17 रसीदों के अलावा और भी ऐसी रसीदें अवश्य ही अस्तित्व में होंगी जिन्हें विपक्षी द्वारा प्रस्तुत नहीं किया गया और यह कहा गया कि काफी तलाश करने पर भी अन्य दस्तावेज उपलब्ध नहीं हो पायें। जहॉ तक प्रदर्श–एम 1 से प्रदर्श–एम 16 ए.सी.जी.17 रसीदों का प्रश्न है इन रसीदों के अवलोकन से यह प्रकट होता है कि प्रार्थी के अतिरिक्त अन्य व्यक्तियों ने भी सफाई कार्य के लिये साप्ताहिक रूप से 500 रूपये प्रति सप्ताह भुगतान प्राप्त किया किन्तु इन रसीदों को इस तथ्य का प्रमाण नहीं कहा जा सकता है कि रसीदों में वर्णित व्यक्तियों के अतिरिक्त अन्य व्यक्तियों जिनमें प्रार्थी भी हो सकता है से वर्ष 2003 व 2004 में सफाई कार्य नहीं करवाया गया हो। साक्षी दाताराम मीणा ने यह कहा है कि अगस्त 2000 से दिनांक 31.12.2004 तक पुराने एक्सचेन्ज एवं ऑफिस में सफाई का कार्य होता था जो एक ही बिल्डिंग में ऊपर नीचे तल पर है।

14. प्रार्थी ने अगस्त 2000 से दिनांक 31.12.2004 तक की अवधि के वाउचर उपस्थिति पंजिका और रोकड बही विपक्षी से आहूत करवाये थे। इस पर विपक्षी के अधिकारी रमेश चन्द्र ने सशपथ यह कहा कि प्रार्थी ने वर्ष 2003 में अक्टूबर एवं दिसम्बर में मात्र 7 सप्ताह तथा वर्ष 2004 में 5 सप्ताह सफाई कार्य किया। शेष अभिलेख के बारे में तलाश करने पर भी उपलब्ध ना होना अधिकारी द्वारा कहा गया है। जब प्रार्थी को किसी माह 2 हजार रूपये तथा किसी माह 2500 रूपये का भुगतान विपक्षी द्वारा किया गया हो, और वान्छित अभिलेख, उपलब्ध ना होने मात्र के कथन सहित प्रस्तुत नहीं किया गया हो तो विपक्षी का कथन निश्चित रूप से संदिग्ध एवं अविश्वसनीय हो जाता है। विपक्षी के साक्ष्य में यह नहीं कहा गया है कि अगस्त 2000 से दिनांक 31.12.2004 तक के वाउचर एवं रोकड बही नष्ट कर दिये गये हों अथवा अस्तित्व में ही ना हों।

15. यह तो स्पष्ट है कि प्रार्थी को साप्ताहिक वेतन भुगतान ए.सी.जी.17 रसीदों पर किया जाता था। कोई नियुक्ति पत्र जारी नहीं किया गया था। इसलिये प्रार्थी के आधिपत्य में सेवा अवधि प्रमाणित करने सम्बन्धी कोई प्रलेख होना सम्भव ही नहीं था। यह विपक्षी ही हैं, जो सुसंगत अवधि में प्रार्थी के अतिरिक्त अन्य किसी व्यक्ति द्वारा सफाई कार्य करने का तथ्य, प्रलेखों को प्रस्तुत करते हुए सिद्ध कर सकते थे, जो विपक्षी द्वारा नहीं किया गया। प्रदर्श–एम 1 से एम 16 रसीदों के सन्दर्भ में यह कहा जा सकता है कि मात्र वर्ष 2004 में विभिन्न तिथियों पर अन्य व्यक्तियो ने भी सफाई कार्य किया किन्तु, जैसा कि विपक्षी साक्षी दाताराम मीणा ने कहा है कि उनके यहां महुआ में एस.डी.ओ.टी. ऑफिस और एक्सचेन्ज दोनों अलग–अलग भवन में स्थित हैं। ठेकड़ा में स्थित नया एक्सचेन्ज अलग भवन में है जो 2 किलोमीटर से कम दूरी पर स्थित था। इस साक्षी ने यह नहीं बताया है कि पुराने एक्सचेन्ज भवन और एस.डी.ओ.टी. ऑफिस में सफाई का कार्य कौन करता था। साक्षी कहता है कि महुआ ठेकड़ा में नये एक्सचेन्ज का भवन वर्ष 2000 में बन गया था। साक्षी स्वीकार करता है कि अगस्त 2000 से दिनांक 31.12.2004 तक के सारे वाउचर्स उसने नहीं देखें। इस अवधि के पुराने एक्सचेन्ज एवं कार्यालय से सफाई से सम्बन्धित कोई वाउचर पत्रावली पर पेश नहीं है।

16. माननीय सर्वोच्च न्यायालय ने डायरेक्टर फिशरीज टर्मिनल बनाम भीखूभाई मेघाजी भाई चावड़ा, गोरीशंकर बनाम स्टेट ऑफ राजस्थान तथा गोपालकृष्णा जी केतकर बनाम मोहम्मद हाजी लतीफ के निर्णयों में यह कहा है कि एक दैनिक वेतन भोगी कर्मचारी को कार्यालयी प्रलेखों जैसे मस्टररोल आदि तक पहुंचना कठिन होता है। कर्मकार जब यह दावा करता है कि उसने 240 दिन कार्य नियोजक के अधीन किया, तो यह सिद्धिभार नियोजक पर अन्तरित हो जाता है कि वह यह प्रमाणित करें कि कर्मकार ने उसके कथनानुसार कार्य नहीं किया। माननीय सर्वोच्च न्यायालय ने यह भी कहा है कि एक ऐसे पक्षकार जिसके पास ऐसी सर्वोत्तम साक्ष्य हो जो विवाद बिन्दु पर प्रकाश डाल सकें, द्वारा ऐसी साक्ष्य प्रस्तुत न करने पर न्यायालय द्वारा उसके विरूद्ध प्रतिकूल उपधारणा की जानी चाहिये।

17. माननीय राज. उच्च न्यायालय ने मैनेजर मैसर्स मित्तल स्टील मैन्यु. कं. लि. बनाम चौथाराम तथा राज. एग्रीकल्चर यूनिर्वसिटी बनाम लक्ष्मण दान व अन्य के निर्णयों में यही अधिमत व्यक्त करते हुए नियोजक के विरूद्ध प्रतिकूल उपधारणा किया जाना न्यायोचित ठहराया है। इसके विपरीत विपक्षी की ओर से जी.एम., बी.एस.एन.एल बनाम महेश चन्द्र के निर्णय में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित अधिमत का अवलम्ब लिया गया है। इस निर्णय में माननीय सर्वोच्च न्यायालय ने कहा है कि

जब कर्मकार एक केलेण्डर वर्ष की अवधि में 240 दिन कार्य करने का दावा करता हो तो इसे प्रमाणित करने का सिद्धिभार कर्मकार पर ही है। नियोजक पर यह सिद्धिभार आरोपित करना कि वह यह प्रमाणित करे कि कर्मकार ने एक केलेण्डर वर्ष की अवधि में 240 दिन कार्य नहीं किया, त्रुटिपूर्ण है। इस निर्णय में माननीय सर्वोच्च न्यायालय ने नियोजक के विरूद्ध प्रतिकूल उपधारणा किया जाना इस कारण अनुचित माना था कि नियोजक को सुसंगत प्रलेख प्रस्तुत करने का न्यायालय द्वारा निर्देश नहीं दिया गया था तथा यह भी मागदर्शन दिया है कि प्रतिकूल उपधारणा करने का विनिश्चय प्रत्येक मामले के तथ्यों और परिस्थितियों पर निर्भर करता है।

18. इन परिस्थितियों में और प्रस्तुत किये गये निर्णयों में प्रतिपादित विधि के प्रकाश में यह स्पष्ट है कि विपक्षी ने इस अधिकरण द्वारा निर्देशित किये जाने के उपरान्त भी आदेशित प्रलेख अधिकरण के समक्ष प्रस्तुत नहीं कियें। खोजने पर भी उपलब्ध ना हो पाना, एक ऐसा साधारण सा बहाना है जिस पर न तो निर्भर किया जा सकता है और ना हीं विश्वास। यदि विपक्षी प्रश्नगत अवधि (अगस्त 2000 से 31.12.2004 तक) का सम्पूर्ण प्रलेख प्रस्तुत करता तो यह सम्भावना निर्मूल नहीं है कि इन प्रलेखों में वर्णित तथ्य विपक्षी के विपरीत होते। इसलिये मेरे अभिमत से विपक्षी के विरूद्ध, इस प्रकरण के विशिष्ट तथ्यों और परिस्थितियों में प्रतिकूल उपधारणा किया जाना न्यायोचित है। इस विवेचन के उपरान्त प्रार्थी यह प्रमाणित करने में सफल हुआ है कि दिनांक 1.1.2005 को की गई सेवामुक्ति के पूर्व एक केलेण्डर वर्ष की अवधि में उसने 240 दिन से अधिक सेवा विपक्षीगण के अधीन की है।

19. माननीय मद्रास उच्च न्यायालय ने अपने निर्णय द मैनेजमेन्ट ऑफ सिल्वर सेण्ड्स बीच व अन्य बनाम द वर्कमैन सिल्वर सैण्ड्स एम्पलॉयीज यूनियन व अन्य में यह कहा है कि कर्मकारों की संक्षिप्त रूप से सेवामुक्ति करते समय उनके द्वारा किये जा रहे कार्य को ठेके पर सम्पादित करवाया जाना अविधिपूर्ण है। विशेष रूप सें तब, जब कर्मकार से लिये जाना वाला कार्य सतत् उत्पन्न आवश्यकता जनित हो। उपर्युक्त विवेचन के उपरान्त चूंकि प्रार्थी की सेवामुक्ति दिनांक 1.1.2005 से ठेके पर कार्य सम्पन्न करवाने के उददेश्य से की गई है, यह सेवामुक्ति छंटनी के रूप में की गई प्रमाणित होती है। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

20. **<u>विचारणीय बिन्दु 2</u> :–** विपक्षीगण ने अपने वादोत्तर के चरण संख्या 4 में यह कहा है कि प्रार्थी को विपक्षी द्वारा न तो कभी नियुक्त किया गया और ना ही सेवामुक्त। औद्योगिक विवाद अधिनियम के प्रावधान उक्त प्रकरण पर लागू नहीं होते। विपक्षी साक्षी ने अपने साक्ष्य में भी यह नहीं कहा है कि उन्होनें प्रार्थी को कोई नोटिस, या नोटिस वेतन एवँ छंटनी प्रतिकर दिया हो। उभयपक्ष के तर्कों को सुने जाने के दौरान भी विपक्षी प्रतिनिधि ने इसे इस तथ्य को स्वीकार किया है कि प्रार्थी को कोई नोटिस, या नोटिस वेतन एवँ छंटनी प्रतिकर का भुगतान नहीं किया गया है। बिन्दु संख्या 1 पर पारित निर्णय के अनुसार प्रार्थी ने सेवामुक्ति के पूर्व एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक विपक्षी के अधीन सेवा किया जाना प्रमाणित किया है, इसलिये प्रार्थी की सेवामुक्ति छंटनी है और ऐसी छंटनी किये जाने के पूर्व औद्योगिक विवाद अधिनियम की धारा 25 (एफ) के अन्तर्गत उपबन्धित दशाओं की अनुपालना किया जाना आवश्यक है। चूंकि विपक्षी द्वारा इन आवश्यक दशाओं यथा एक माह की अवधि का नोटिस, या नोटिस वेतन एवं विधि अनुसार देय छंटनी प्रतिकर का भुगतान प्रार्थी को नहीं किया गया है इसलिये विपक्षी द्वारा दिनांक 1.1.2005 से की गई प्रार्थी की छंटनी अवैध प्रमाणित होती है। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

21. **<u>विचारणीय बिन्दु संख्या 3</u> :–** प्रार्थी कान्ता देवी ने अपने साक्ष्य में यह तो कहा है कि उससे कनिष्ठ श्रमिक सेवामुक्ति के समय कार्यरत थे तथा सेवामुक्ति के उपरान्त नये श्रमिकों को भी विपक्षी ने भर्ती किया, किन्तु प्रार्थी ने उससे कनिष्ठ कार्यरत श्रमिकों का कोई विवरण, उनकी नियुक्ति तिथि व नाम आदि साक्ष्य में वर्णित नहीं कियें हैं। प्रार्थी ने उसकी सेवामुक्ति के उपरान्त कथित भर्ती किये गये नये श्रमिकों के नाम एवं विवरण भी वर्णित नहीं किये हैं। इन परिस्थितियों में प्रार्थी यह प्रमाणित करने में विफल रहा है कि प्रार्थी से कनिष्ठ कर्मकारों को सेवामुक्ति के पश्चात भी सेवा में रखा गया हो तथा सेवामुक्ति के पश्चात नये कर्मकारों को नियोजित भी किया गया हो अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

22. **अनुतोष :–** प्रार्थी के प्रतिनिधि का यह निवेदन है कि चूंकि प्रार्थी की सेवामुक्ति अवैध छंटनी के रूप में की गई है एवँ सेवामुक्ति के उपरान्त प्रार्थी बेरोजगार रही है इसलिये उसे पूर्ण विगत वेतन एवं सेवा में निरन्तरता सहित सेवा में पुनः लिया जावें।

23. मैनें प्रार्थी के इस निवेदन पर प्रकरण के तथ्यों के सन्दर्भ में विचार किया।

24. प्रार्थी ने अगस्त 2000 से दिनांक 31.12.2004 तक दैनिक वेतन भोगी अंशकालीन सफाई कर्मचारी के रूप में विपक्षी के अधीन कार्य किया है। प्रार्थी को विहित चयन प्रक्रिया अपनाते हुए स्थायी पद के विरूद्ध नियमित नियुक्ति नहीं दी गई थी, वरन् सफाई कार्य की आवश्यकता अनुरूप उससे कार्य लिया जाता था। प्रार्थी स्वंय ने अपने प्रतिपरीक्षण में यह स्वीकार किया है कि वह सुबह करीब 7 बजे डयूटी पर आती थी एवं करीब 11 बजे तक कार्य करती थी। विपक्षी के अनुसार तो, प्रार्थी मात्र 2 घण्टे ही

प्रतिदिन कार्य करती थी। प्रार्थी ने अपने कथन में यह कहा है कि सेवामुक्ति के उपरान्त वह पूर्णतः बेरोजगार है। विपक्षी द्वारा प्रार्थी के इस कथन को प्रतिपरीक्षा के दौरान खण्डित नहीं किया गया है। इस स्थति में जबकि प्रार्थी अनियमित रूप से दैनिक वेतन भोगी अंशकालीन कर्मचारी के रूप में कार्यरत रहीं है, प्रार्थी की सेवामुक्ति के अवैध प्रमाणित होने पर भी प्रार्थी को सेवा में उसी पद पर कार्य हेतु विनियमित कर सेवा में पुनर्स्थापित किया जाना न्यायोचित नहीं है।

25. माननीय सर्वोच्च न्यायालय ने अपने नवीनतम निर्णयों दि रीजनल मैनेजर एल.आई.सी. ऑफ इण्डिया बनाम दिनेश सिंह 2019 एल.एल.आर. 709, एवं 2019 एल.एल.आर. 277 डिप्टी एक्जीक्यूटिव इन्जिनीयर बनाम कुबेर भाई कानजी भाई (स्वंय अधिकरण द्वारा) में यह अधिमत व्यक्त किया है कि सेवा की प्रकृति एवं अवधि तथा लम्बे वादकरण–अन्तराल के तथ्यो को ध्यान में रखते हुए सेवा में पुनर्स्थापन के स्थान पर एक मुश्त प्रतिकर के रूप में एक लाख रूपये कर्मकार को दिलवाया जाना न्यायोचित है। माननीय उच्चतम न्यायालय ने यह मार्गदर्शन भी प्रदान किया है कि एक दैनिक वेतन भोगी अस्थायी कर्मकार की अवैध सेवा समाप्ति पर वह दैनिक वेतन भोगी पद पर नियमतीकरण अथवा उसी पद पर सेवा जारी रखवाने का अधिकारी नहीं है। अधिनियम की धारा 11 ए के प्रावधानों के अन्तर्गत कर्मकार को सेवा में बहाली के स्थान पर एकमुश्त प्रतिकर राशि दिलवाते हुए दावे का निस्तारण किया जाना उचित है।

26. इन निणर्यों में दिये गये मार्गदर्शन के प्रकाश में प्रार्थी की सेवासमाप्ति अवैध प्रमाणित होने के उपरान्त प्रार्थी सेवा में पुनर्स्थापन एवं विगत वेतन के स्थान पर एकमुश्त प्रतिकर के रूप में एक लाख रूपये प्राप्त करने की अधिकारी प्रमाणित होती है।

27. अतः श्रम मन्त्रालय, भारत सरकार द्वारा सन्दर्भित इस विवाद का अधिनिर्णय करते हुए प्रार्थी श्रीमती कान्ता देवी की प्रबन्धन एस.डी.ओ.टी. बीएसएनएल महुवा द्वारा दिनांक 1.1.2005 से की गई सेवासमाप्ति अनुचित एवं अवैध घोषित की जाती है। प्रार्थी इस सेवासमाप्ति के परिणामस्वरूप विपक्षी से एकमुश्त प्रतिकर के रूप में एक लाख रूपये प्राप्त करने की अधिकारी है। विपक्षीगण इस प्रतिकर राशि का भुगतान प्रार्थी को दो माह की अवधि में करें अन्यथा प्रार्थी इस राशि पर नौ प्रतिशत वार्षिक ब्याज दर से ब्याज प्राप्त करने की भी अधिकारी होगी।

आदेश

28. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रेफरेन्स का उत्तर उपर्युक्तानुसार दिया जाता है।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1721.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स चीफ पोस्ट मास्टर जनरल, राजस्थान सर्किल, डिपार्टमेन्ट ऑफ पोस्ट, जयपुर। और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 26 /2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2019 को प्राप्त हुए थे।

[सं. एल-40012/09/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1721**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26 /2016) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the Chief Post Master General, Jaipur Rajasthan & Others, and their workmen which were received by the Central Government on 18.02.2019.

[No. L-40012/09/2016-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 26 / 2016

राधामोहन चतुर्वेदी

पीठासीन अधिकारी

रेफरेन्स नं. L- 40012/09 /2016 –IR(DU) दिनांक 03/06/2016

मुकेश कुमार पुत्र श्री रामपाल जाति वाल्मिकी निवासी वार्ड नं. 18, लक्ष्मणगढ जिला सीकर, राजस्थान

बनाम

1. चीफ पोस्ट मास्टर जनरल, राजस्थान सर्किल, डिपार्टमेन्ट ऑफ पोस्ट, एम.आई.रोड, जयपुर 302001
2. अधीक्षक, डाकघर, सीकर
3. पोस्टमास्टर ग्रेड प्रथम, लक्ष्मणगढ जिला सीकर, राजस्थान

उपस्थित :–

प्रार्थी की तरफ से : श्री संतोष कुमार सैनी – अभिभाषक

अप्रार्थी की तरफ से : कोई नहीं

: **पंचाट** :

दिनांक : 25–01–2019

1. भारत सरकार के श्रम एवं रोजगार मंत्रालय द्वारा दिनांक 3.6.2016 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे अधिनियम कहा जायेगा) की धारा 10 (1) के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में निम्नांकित औद्योगिक विवाद इस अधिकरण को न्यायनिर्णयन के लिए प्रेषित किया। ''क्या प्रबंधन पोस्ट मास्टर, लक्ष्मणगढ़ जिला सीकर का कर्मकार मुकेश, सफाई कर्मचारी को मौखिक आदेश दिनांक 20.8.2013 को नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?'' इस सन्दर्भ की सूचना प्रार्थी एवं अप्रार्थीगण को दी गई और यह अपेक्षा की गई कि प्रार्थी अपने दावे के अभिकथन अधिकरण के समक्ष प्रस्तुत करें। तदुपरान्त प्रार्थी द्वारा 26.8.16 को दावे का अभिकथन प्रस्तुत किया गया। प्रकरण के संक्षिप्त तथ्य निम्नानुसार है।

2. प्रार्थी के अनुसार वह अप्रार्थीगण के अधीन पोस्ट मास्टर, लक्ष्मणगढ़ के नियन्त्रण में 31.1.2009 को सफाई कर्मचारी के पद पर नियोजित होकर सेवा पृथक करने की तिथि तक निरन्तर सेवारत रहा। प्रार्थी की सेवा पूर्णतः सन्तोषप्रद रही। प्रार्थी जनवरी 2009 से अप्रार्थीगण के नियोजन में एक कैलेण्डर वर्ष में 240 दिन से अधिक कार्यरत रहा और इस प्रकार प्रार्थी कर्मकार और अप्रार्थीगण उसके नियोजक हो गये। प्रार्थी के पद का कार्य, स्थायी प्रकृति का होते हुए भी प्रार्थी को नियमित कर्मचारी की वेतन श्रृखला का लाभ नहीं दिया गया। प्रार्थी ने इस हेतु कई बार निवेदन भी किया। प्रार्थी की मांग से खिन्न होकर अप्रार्थीगण ने 20.8.13 को मौखिक आदेश से छंटनी के तौर पर प्रार्थी की सेवा समाप्त कर दी। अप्रार्थीगण ने सेवा समाप्ति से पूर्व कार्यरत कर्मकारों की वरियता सूची जारी नहीं की, न ही अधिनियम के आज्ञापक प्रावधानों के अन्तर्गत नोटिस, नोटिस वेतन तथा मुआवजा

राशि का भुगतान किया। इस प्रकार प्रार्थी की छंटनी अनुचित एवं अवैध है। सेवा से पृथक करने के कारण प्रार्थी एवं उसके परिजन का जीवन निर्वाह संकटपूर्ण हो गया, इसलिये प्रार्थी अप्रार्थीगण से सवेतन सेवा में निरन्तरता सहित पिछले वेतन भत्ते भी प्राप्त करने का अधिकारी है। अतः दावा स्वीकार कर प्रार्थी के पक्ष में तदनुसार अधिनिर्णय पारित किया जाये।

3. दिनांक 31.10.2016 को विपक्षी की और से उनके प्रतिनिधि श्री मोहित सिंह उपस्थित हुए जिन्होंने दावे की प्रति प्राप्त कर प्रतिउत्तर के लिए अवसर चाहा। तत्पश्चात दिनांक 24.1.17 को विपक्षीगण की और से न तो कोई उपस्थित हुआ और न हीं वादोत्तर प्रस्तुत किया गया। इसलिये अप्रार्थीगण के विरूद्ध एकपक्षीय कार्यवाही का आदेश पारित किया गया। प्रार्थी ने अपने साक्ष्य में मुकेश कुमार का शपथ–पत्र प्रस्तुत किया और प्रलेखिय साक्ष्य में प्रदर्श 1 से 29 तक प्रलेख प्रदर्शित किये।

4. दिनांक 10.4.17 को अप्रार्थीगण की तरफ से एक प्रार्थना–पत्र एकपक्षीय कार्यवाही को अपास्त करवाने हेतु वादोत्तर सहित प्रस्तुत किया गया, जिसका प्रतिउत्तर प्रार्थी ने प्रस्तुत करते हुए प्रार्थना–पत्र का विरोध किया। दिनांक 27.7.17, 24.10.17 एवं 30.11.2017 तक विपक्षीगण का यह प्रार्थना–पत्र निस्तारित नहीं हो पाया। तत्पश्चात दिनांक 12.11.18 एवं 12.12.18 को भी अप्रार्थीगण की तरफ से कोई उपस्थित नहीं हुआ। इसलिये अप्रार्थीगण के प्रार्थना–पत्र दिनांक 10.4.17 को अग्रसरण के अभाव में निरस्त कर दिया गया तथा 16.1.19 बहस प्रार्थी हेतु नियत की गई।

5. दिनांक16.1.19 को भी विपक्षीगण की तरफ से कोई उपस्थित नहीं हुआ इसलिये प्रार्थी पक्ष के तर्क सुने गये और साक्ष्य का परिशीलन किया गया।

6. प्रार्थी के प्रतिनिधि का यह तर्क है कि प्रार्थी ने विपक्षीगण के अधीन जनवरी 2009 से 20.8.2013 तक लगातार कार्य किया। उसे सफाई कर्मचारी के रूप में वेतन का भुगतान भी किया गया, जिसकी पुष्टि प्रदर्श 8 से प्रदर्श 29 तक प्रलेखों से होती है। प्रार्थी ने सितम्बर 2012 से अगस्त 2013 तक एक कैलेण्डर वर्ष में 240 दिन से अधिक निरन्तर सेवा प्रदान की है। इसलिये प्रार्थी को सेवा से पृथक करना छंटनी की परिभाषा में आता है। इस प्रकार धारा 25 (एफ) (जी) एवं (एच) अधिनियम के प्रावधानों का अनुपालन न किये जाने से प्रार्थी को सेवा में निरन्तरता, पुनः स्थापन एवं पिछला वेतन दिलवाया जाना उचित है। उन्होने अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) 2005 डी.एन.जे. (सु.को.) 143 जसमेर सिंह बनाम स्टेट ऑफ हरियाणा

(2) 2011 (2) आर.एल.डब्ल्यू. 1218 (सु.को.) कुलदीप सिंह बनाम जी.एम.आई.टी.डी.एफ.सी. व अन्य

(3) 2015 डी.एन.जे. (सु.को.)905 राजकुमार दीक्षित बनाम विजयकुमार गौरीशंकर

(4) 2015 डी.एन.जे. (सु.को.) 523 एम.एम.एण्ड कम्पनी लिमिटेड बनाम मेकिनन एम्पलायीज यूनियन

(5) 1999 (2) एससीटी 667 अजायबसिंह बनाम दी सरहिन्द कॉआपरेटिव मार्केटिंग सोसायटी

(6) आर.एल.डब्ल्यू. 2003 (3) राजस्थान 1657 सवाई माधोपुर एवं टोंक जिला दुग्ध उत्पादक संघ बनाम ओमप्रकाश शर्मा

7. मैंने विद्वान अभिभाषक प्रार्थी द्वारा प्रस्तुत तर्क साक्ष्य एवं निर्णयज विधि पर मनन किया। इस प्रकरण में निम्नांकित विचारणीय बिन्दु उत्पन्न हुए है।

बिन्दु संख्या 1:– क्या प्रार्थी अप्रार्थीगण के अधीन कर्मकार के रूप में नियोजित होकर सेवापृथकरण दिनांक 20.8.13 से पूर्व एक कैलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवारत रहा ?

बिन्दु संख्या 2 :– क्या अप्रार्थीगण द्वारा 20.8.13 को छंटनी करते हुए प्रार्थी की सेवा समाप्त कर दी गई किन्तु अधिनियम की धारा 25 (एफ) (जी) एवं (एच) के आदेशात्मक प्रावधानों का अनुपालन सेवासमाप्ति से पूर्व नहीं किया गया ?

बिन्दु संख्या 3 अनुतोष ?

8. उपर्युक्त बिन्दुओं पर क्रमिक विनिश्चय इस प्रकार है।

9. **बिन्दु संख्या 1** प्रार्थी ने अपने साक्ष्य शपथ–पत्र में यह कहा है कि वह अप्रार्थीगण के अधीन लक्ष्मणगढ़ डाकघर में दिनांक 31.1.2009 को सफाई कर्मचारी के पद पर नियोजित होकर सेवापृथक करने की तिथि 20.8.2013 तक लगातार कार्य करता रहा है। प्रार्थी कैलेण्डर वर्ष में 240 दिन से अधिक कार्यरत होने से एक औद्योगिक कर्मकार हो गया। प्रार्थी ने अपने साक्ष्य में जो प्रलेख प्रदर्शित किये उनके अवलोकन से यह प्रकट होता है कि विपक्षीगण ने लक्ष्मणगढ़ डाकघर में जनवरी 2009 से अगस्त 2013 तक सफाई भत्ते के रूप में दो लाख तेरह हजार आठ सौ चवालीस रूपये का भुगतान किया। यह तथ्य सूचना का अधिकार

अधिनियम के अन्तर्गत प्रार्थी को प्रदर्श 5 पत्र द्वारा सूचित किया गया। यह सूचना प्रार्थी के प्रार्थना–पत्र प्रदर्श 1 के बिन्दु संख्या एक के प्रतिउत्तर में दी गई है। विपक्षी ने यह स्वीकार किया है कि कन्टीन्जेन्ट पर सफाई करने वाले व्यक्ति का कोई हाजरी रजिस्टर नहीं बनाया जाता।

10. प्रार्थी के साक्ष्य में प्रदर्शित प्रदर्श 21 से लेकर 29 तक प्रलेखों के अवलोकन से यह प्रमाणित होता है कि सेवा से पृथक किये जाने की तिथि 20.8.2013 से एक कैलेण्डर वर्ष पूर्व की अवधि में अर्थात अगस्त 2012 से जुलाई 2013 की अवधि में प्रार्थी द्वारा लगातार 335 दिन तक कार्य कर मजदूरी का भुगतान प्राप्त किया यद्यपि प्रार्थी ने 1.8.13 से 20.8.2013 तक मजदूरी के भुगतान का प्रलेखीय प्रमाण प्रस्तुत नहीं किया है किन्तु प्रदर्श 5 पत्र के माध्यम से विपक्षी ने अगस्त 2013 तक सफाई भत्ते का भुगतान किया जाना सूचित किया है। इस प्रकार सेवा पृथक्करण की तिथि से एक कैलेण्डर वर्ष पूर्व की अवधि में प्रार्थी का 240 दिन से अधिक की अवधि तक निरन्तर सेवारत रहना अधिनियम की धारा 25 (बी) की अपेक्षा अनुरूप प्रमाणित होता है। अतः यह बिन्दु विपक्षीगण के साक्ष्य के अभाव में प्रार्थी के पक्ष में प्रमाणित होता है।

11. **बिन्दु संख्या 2 :–** प्रार्थी ने अपने साक्ष्य के दौरान यह कहा है कि प्रार्थी की सेवा अप्रार्थी संख्या 2 के निर्देश पर अप्रार्थी संख्या 3 द्वारा मौखिक आदेश द्वारा 20.8.2013 को दोपहर बाद से बतौर छंटनी के समाप्त कर दी गई तथा ऐसा करने से पूर्व कार्यरत व्यक्तियों की कोई वरियता सूची जारी नहीं की। प्रार्थी को अधिनियम के तहत निर्धारित नोटिस, नोटिस वेतन तथा छंटनी मुआवजा राशि का भुगतान नहीं किया। प्रार्थी की सेवा बतौर छंटनी समाप्त की गयी। प्रार्थी के अभिवचनों व सशपथ साक्ष्य का कोई खण्डन अप्रार्थीगण ने स्वेच्छया नहीं किया है। अभिलेख पर ऐसा कोई साक्ष्य नहीं है जिसमें विपक्षीगण द्वारा प्रार्थी को सेवामुक्त करते समय एक माह का पूर्व नोटिस, अथवा नोटिस के अभाव में वेतन तथा सेवा की अवधि के अनुरूप छंटनी प्रतिकर का भुगतान किया जाना प्रमाणित होता हो। इस प्रकार अप्रार्थीगण द्वारा प्रार्थी की छंटनी करते समय अधिनियम की धारा 25 (एफ) (जी) एवं (एच) के आदेशात्मक प्रावधानों की अनुपालना न किया जाना प्रमाणित होता है। अतः यह बिन्दु भी अप्रार्थीगण के साक्ष्य के अभाव में प्रार्थी के पक्ष में निर्णित किया जाता है।

12. **बिन्दु संख्या 3 :–** बिन्दु संख्या 1 व 2 के विवेचन से यह निष्कर्ष प्राप्त होता है कि प्रार्थी का 31जनवरी 2009 से 20.8. 2013 तक लगभग 4 वर्ष 7 माह तक सेवारत रहना प्रमाणित हुआ है। अप्रार्थीगण द्वारा प्रार्थी को सेवा से पृथक करने से पूर्व अधिनियम की धारा 25 (एफ) (जी) और (एच) के अनुपालन भी नहीं की गई। इसलिये प्रार्थी की सेवामुक्ति छंटनी के रूप में अवैध रूप से किया जाना प्रमाणित होता है। माननीय सर्वोच्च न्यायालय ने अपने निर्णय जसमेर सिंह बनाम स्टेट ऑफ हरियाणा में यह अभिमत व्यक्त किया है कि अधिनियम की धारा 25 (एफ) (जी) एवं (एच) का अनुपालन किये बिना सेवामुक्ति अवैध है तथा कर्मकार को सेवा में निरन्तरता व विगत वेतन सहित पुनः नियोजित किया जाना चाहिये।

13. माननीय सर्वोच्च न्यायालय ने ही कुलदीप सिंह बनाम जी.एम.आई.टी.डी.एफ.सी. व अन्य के निर्णय में समान अभिमत व्यक्त करते हुए कर्मकार को विगत लाभों सहित सेवा में पुनः नियोजित करने का निर्देश दिया है।

14. माननीय राजस्थान उच्च न्यायालय ने अपने निर्णय सवाई माधोपुर व टोंक जिला दुग्ध उत्पादक सहकारी संघ लिमिटेड बनाम ओमप्रकाश शर्मा के निर्णय में यह कहा है कि अस्थायी कर्मचारी की सेवा समाप्ति को भी तब तक छंटनी माना जायेगा जब तक कर्मचारी का मामला अधिनियम की धारा 2 (ओ.ओ.) की परिधि में न आवे। नियुक्ति किसी भी प्रकृति की हो छंटनी ही मानी जायेगी।

15. प्रार्थी के साक्ष्य से यह भी प्रकट हुआ है कि 20.8.2013 को सेवा समाप्ति के उपरान्त उसने लगभग 3 वर्ष से अधिक अवधि अर्थात 3 नवम्बर 2016 तक सेवा में पुर्नस्थापना हेतु कोई प्रयास नहीं किया और निष्क्रिय रहा। इसलिये इस निष्क्रियता की अवधि में प्रार्थी को वेतन का भुगतान अप्रार्थीगण से करवाया जाना युक्तिसंगत एवं न्यायोचित नहीं है। प्रार्थी को सेवा में निरन्तरता एवं 3.11.2016 से सेवा में पुनः लिये जाने तक पूर्ण मजदूरी (जो कि समय समय पर पुनरीक्षीत की गयी हो) के भुगतान सहित पुनः सेवा में नियोजित होने का अधिकारी प्रमाणित पाया जाता है।

आदेश

16. अतः प्रार्थी द्वारा प्रस्तुत दावे का अभिकथन एकपक्षीय स्वीकार कर अप्रार्थीगण द्वारा 20.8.2013 को की गई प्रार्थी की सेवामुक्ति अवैध घोषित की जाती है। अप्रार्थीगण को आदेशित किया जाता है कि वह प्रार्थी को निरन्तरता सहित पुनः सेवा में नियोजित करें तथा दिनांक 3.11.2016 से अवार्ड की तिथि तक प्रार्थी को सम्पूर्ण मजदूरी (समय–समय पर किये गये पुनरिक्षण सहित) 2 माह की अवधि में भुगतान करें अन्यथा प्रार्थी देय राशि पर 9 प्रतिशत वार्षिक ब्याज दर से ब्याज भी पाने का अधिकारी होगा।

17. पंचाट तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रिफरेन्स का उत्तर उपर्युक्तानुसार दिया जाता है।

18. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाय।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1722.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, न्युक्लीयर पावर कारपोरेशन ऑफ इंडिया, डाकघर अणुशक्ति, वाया कोटा, जयपुर। और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2019 को प्राप्त हुए थे।

[सं. एल-42011/110/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1722.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2012) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the Director, Nuclear Power Corporation of India , Kota, Rajasthan & Others, and their workmen which were received by the Central Government on 08.07.2019.

[No. L-42011/110/2011-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 25 / 2012

राधामोहन चतुर्वेदी
पीठासीन अधिकारी

रेफरेन्स नं. L-42011/110/2011–IR(DU) दिनांक 25/01/2012

महासचिव, परमाणु विद्युत कर्मचारी यूनियन (सीटू),
यूनियन कार्यालय, फेज–2,
भाभा नगर, वाया कोटा (राज.)

बनाम

v/s

स्थल निदेशक, रावत भाटा राजस्थान साईट,
न्युक्लीयर पावर कारपोरेशन ऑफ इंडिया,
डाकघर अणुशक्ति, वाया कोटा 323303
राजस्थान

प्रार्थी की तरफ से : श्री जे.सी.गुप्ता – प्रतिनिधि

अप्रार्थी की तरफ से : श्री धर्मेन्द्र जैन –प्रतिनिधि

: **अधिनिर्णय** :

दिनांक : 20. 06. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 25.1.2012 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे अधिनियम कहा जावेगा) की धारा 10 (2) (ए) तथा (1) (ड़ी) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया

> "Whether the action of the management of Site Director, Nuclear Power Corporation of India Anushakti, Kota in not giving two financial upradations under ACP Scheme to Shri B. Bohra, JRA-II, (FHU), RAPS 1 & 2 is legal and justified? What relief the workman is entitled to?"

2. इस अधिकरण द्वारा उभयपक्ष को आहूत करते हुए प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. प्रार्थी की और से दिनांक 30.10.2012 को दावे का अभिकथन प्रस्तुत किया गया। प्रार्थी का कथन है कि श्रमिक बी. बोहरा की नियुक्ति 10.7.1975 को विपक्षी के अधीन एलडीसी के पद पर हुई थी। दिनांक 18.12.96 से श्रमिक जे.आर. सेकिण्ड के पद पर पदोन्नत होकर कार्यरत है। 5 वें वेतन आयोग द्वारा उन कर्मचारियों के लिये जिन्हे पदोन्नती के पर्याप्त अवसर उपलब्ध नहीं थे, एक प्रगति योजना 9.8.1999 से लागू की गई। श्रमिक बी. बोहरा इस योजना के अनुसार 9.8.1999 से दूसरी वित्तीय पदोन्नति पाने का अधिकारी है किन्तु विपक्षी ने उसे इस योजना के लाभ से वन्चित रखा। विपक्षी द्वारा समान पद व स्थिति वाले श्रमिक श्री के.बी.शर्मा को एक ही तिथी से दो वित्तीय पदोन्नतियाँ दे दी गई। यह संविधान के प्रावधानों के विपरीत है। अतः श्रमिक बी. बोहरा को 9.8.99 से समान स्थिति वाले श्रमिक के तुल्य पदोन्नति पिछले वेतन सहित दिलवाई जावे।

4. विपक्षी ने प्रतिउत्तर में प्रार्थी के अभिकथन का विरोध करते हुए यह कहा है कि बी. बोहरा को समय–समय पर पदोन्नतियां विभाग के नियमों के अन्तर्गत दी गई है। इस कारण ए.सी.पी. स्कीम के तहत देय 2 वित्तीय अपग्रेडेशन का लाभ बी. बोहरा को देय नहीं है। यदि किसी वर्ग के कर्मचारियों के लिए कोई पदोन्नति योजना नहीं होती तो ऐसी स्थिति में कर्मचारियों को ए.सी.पी. स्कीम में 2 वित्तीय अपग्रेडेशन दिये जाते है। बी. बोहरा को 9.8.1999 से कोई भी वित्तीय पदोन्नति नहीं दी जा सकती है। अतः दावा निरस्त कियाा जावें।

5. वादोत्तर प्रस्तुतीकरण के पश्चात दिनांक 23.3.2017 से प्रार्थी को साक्ष्य हेतु अवसर प्रदान किये गय। दिनांक 10.12.18 को अन्तिम अवसर भी दिया गया। दिनांक 8.3.19 को प्रार्थी द्वारा साक्ष्य शपथ पत्र की प्रति विपक्षी प्रतिनिधि को यद्यपि दे दी गई थी किन्तु अधिकरण के समक्ष प्रस्तुत नहीं की गई। इस पर अन्तिम अवसर बढाते हुए 4.6.19 साक्ष्य हेतु तिथि नियत की गयी। 4. 6.19 को प्रार्थी के प्रतिनिधि ने प्रार्थी बी. बोहरा को साक्ष्य हेतु प्रस्तुत करने में असमर्थता व्यक्त की, इस स्थिति में प्रार्थी को साक्ष्य का अवसर समाप्त कर दिया गया।

6. चूंकि प्रार्थी ने दो वर्ष से अधिक और 12 अवसर दिये जाने के उपरान्त भी अपने दावे के अभिकथन के समर्थन में कोई साक्ष्य, मौखिक या प्रलेखीय प्रस्तुत नहीं की है। इसलिये यह अधिकरण श्रम मन्त्रालय द्वारा संदर्भित उपर्युक्त विवाद का अधिनिर्णयन गुणावगुण के आधार पर साक्ष्य के अभाव में करने हेतु समर्थ नहीं है। अतः इस विवाद को प्रार्थी के साक्ष्य के अभाव में उसके विरूद्ध विनिश्चित करते हुए यह सूचित किया जाता है कि प्रार्थी विपक्षी से कोई अनुतोष पाने का अधिकारी नहीं है।

7. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1723.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक आकाशवाणी, अलवर राजस्थान और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 34/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2019 को प्राप्त हुए थे।

[सं. एल-42012/179/2000-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1723.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2009) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the Director, Akashwani, Alwar Rajasthan & Others, and their workmen which were received by the Central Government on 08.07.2019.

[No. L-42012/179/2000-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 34 / 2009

राधामोहन चतुर्वेदी

पीठासीन अधिकारी

रेफरेन्स नं. L-42012/179/2000–IR(DU) दिनांक 01/04/2008

केदार नाथ पुत्र श्री राधेश्याम शर्मा

हनुमान जी की गली,

मोहल्ला सिद्धी पुरा, अलवर

बनाम

v/s

निदेशक आकाशवाणी,

स्कीम नं. 5, अलवर 301001,

राजस्थान

प्रार्थी की तरफ से : श्री एम.एफ. बेग – प्रतिनिधि

अप्रार्थी की तरफ से : श्री राजेन्द्र वैश्य –प्रतिनिधि

: अधिनिर्णय :

: दिनांक : 18. 06. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 1.4.2008 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे अधिनियम कहा जावेगा) की धारा 10 (2) (ए) तथा (1) (ड़ी) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया

> "Whether the action of the management of the Akashwani, Alwar in terminating the services of Shri Kedar Nath S/o.Shri Radhey Shyam Sharma, is legal and justified? If not, to what relief the workman is entitled to?"

2. उपयुर्क्त विवाद प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को आहूत किया गया और प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. प्रार्थी ने दिनांक 17.12.2009 को अपने दावे का अभिकथन प्रस्तुत किया। जिसे 21.3.2016 को संशोधित रूप में प्रस्तुत भी किया। प्रार्थी के अनुसार उसकी प्रथम नियुक्ति दिनांक 22.2.90 को अप्रार्थी द्वारा चतुर्थ श्रेणी श्रमिक के पद पर की गई। उसने कभी कोई अनुपस्थिति नहीं की तथा वर्ष में 240 दिन से अधिक सेवा अवधि पूर्ण की। अप्रार्थी द्वारा 29.5.98 को प्रार्थी की सेवायें समाप्त कर दी गई। सेवा समाप्ति के पूर्व प्रार्थी को एक माह का नोटिस अथवा नोटिस वेतन का भुगतान नहीं किया गया और छंटनी मुआवजा भी नहीं दिया। सेवा समाप्ति करने से पूर्व कोई वरिष्ठता सूची नहीं बनाई गई और प्रार्थी को कोई वरीयता नहीं दी गई। इस प्रकार अप्रार्थी ने अधिनियम की धारा 25 एफ एवं जी तथा नियम 77 का उल्लंघन किया। अतः प्रार्थी का दावा स्वीकार कर प्रार्थी को सवैतनिक निरन्तर सेवा में सभी परिलाभों सहित लिया जावें।

4. विपक्षी ने अपने प्रतिउत्तर में दावे के तथ्यों को अस्वीकार करते हुए यह कहा है कि विपक्षी उद्योग की परिभाषा में नहीं आता है और न हीं कोई औद्योगिक विवाद उत्पन्न हुआ है। अप्रार्थी द्वारा प्रार्थी को किसी भी पद पर नियुक्त नहीं किया गया। प्रार्थी श्रमिक ने आकस्मिक श्रमिक के रूप में विभिन्न समयों पर 114 दिन कार्य किया है। अप्रार्थी ने प्रार्थी की सेवाएं समाप्त नहीं की बल्कि प्रार्थी स्वंय ही कार्य समाप्ति के बाद चला गया। इसलिये प्रार्थी अधिनियम की धारा 25 एफ एवं जी का संरक्षण नही पा सकता। अतः दावा अस्वीकार किया जावें।

5. प्रार्थी ने 19.3.2010 को अतिरिक्त कथन प्रस्तुत करते हुए विपक्षी के अभिवचनों को गलत बताया है।

6. प्रार्थी ने अपने साक्ष्य में स्वंय प्रार्थी केदारनाथ को परीक्षित किया। विपक्षी ने अपने साक्ष्य में विजय ईसरानी केन्द्र अभियन्ता को परीक्षित किया और प्रलेखीय साक्ष्य में प्रदर्श–एम 1 से एम 11 तक प्रलेख प्रदर्शित किये।

7. उभयपक्ष ने अपने अपने लिखित तर्क प्रस्तुत किये है। जिसमें अभिवचनों को पुनरावृत मात्र किया गया है।

8. दिनांक 27.5.2019 को मैनें उभयपक्ष के मौखिक तर्क भी सुने और साक्ष्य का परिशीलन किया।

9. प्रार्थी प्रतिनिधि का तर्क है कि प्रार्थी 22.9.90 से 29.5.98 तक अप्रार्थी के अधीन सेवा की। सेवा समाप्ति से एक वर्ष पूर्व की अवधि में उसने 240 दिन से भी अधिक कार्य किया। इस तथ्य का प्रलेखीय प्रमाण प्रार्थी ने विपक्षी से प्रस्तुत करवाने का निवेदन किया लेकिन विपक्षी ने सम्पूर्ण अभिलेख जो कि उपस्थिति और भुगतान के प्रमाण हो सकते थे, जानबूझकर प्रस्तुत नहीं किये। अप्रेल व मई 1998 के प्रस्तुत किये गये मस्टररोल ओवरटाईम कार्य के है। इसलिये विपक्षी के विरूद्ध प्रतिकूल उपधारणा की जानी चाहिये कि यदि अभिलेख प्रस्तुत किये जाते तो वह प्रार्थी के पक्ष में होते। उन्होनें अपने तर्क के समर्थन में निम्नांकित विधिक दृष्टान्त प्रस्तुत किये गये :–

(1) (2016) (1) एस.सी.सी. (एल. एण्ड़ एस.) 546 गोरीशंकर बनाम स्टेट ऑफ राजस्थान

(2) 2005 ए.आई.आर. एस.सी.डब्ल्यू. 6103, आर.एम.येल्लाटी बनाम असिस्टेन्ट एक्जीक्यूटिव इन्जिनीयर

(3) 1992 लैब आई.सी. 678 (राज.) जनरल मैनेजर नोर्थन रेलवे बनाम सेन्ट्रल इण्डिस्ट्रीयल ट्रिब्यूनल

10. अप्रार्थी की ओर से यह तर्क लिया गया हे कि प्रार्थी को विशेष कार्य के लिये 114 दिन तक कार्य पर रखा गया। उसने 240 दिन कार्य नहीं किया और स्वंय कार्य छोडकर चला गया। इसलिये अधिनियम की धारा 25 एफ के प्रावधानों का अनुपालन आवश्यक नहीं है। प्रार्थी ने अप्रेल व मई 1998 में ठेके पर अप्रार्थी के यहां कार्य किया। इसका भुगतान प्रदर्श–एम 2 और प्रदर्श–एम 3 वाउचर्स के माध्यम से प्राप्त किया। यदि प्रार्थी विपक्षी की सेवा में रहा होता तो उसे ठेके पर कार्य करने की कोई आवश्यकता दी नहीं होती। प्रार्थी यह बताने में भी असमर्थ रहा है कि उसने किस वर्ष में लगातार 240 दिन कार्य किया। ऐसी स्थिति में अप्रार्थी के विरूद्ध प्रतिकूल उपधारणा किये जाने का कोई औचित्य नहीं है। अतः दावा निरस्त किया जावें। इस संदर्भित विवाद में सेवा समाप्ति की कोई तिथि अंकित नहीं थी। प्रार्थी ने अपने दावे के अभिकथन में यह तिथि पहले 25.9.98 वर्णित की, किन्तु बाद में इसे संशोधित करते हुए 29.5.98 वर्णित की। विपक्षी ने इस पर कोई आपत्ति अपने तर्कों के दौरान प्रस्तुत नहीं की है। इसलिये प्रार्थी की सेवा समाप्ति की तिथि 29.5.98 ही विचारणीय है।

11. उभयपक्ष के तर्कों एवं साक्ष्य पर मनन के उपरान्त निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए है : –

बिन्दु संख्या 1 :– क्या प्रार्थी दिनांक 22.2.90 से 29.5.98 तक विपक्षी के अधीन सेवारत रहा तथा सेवा समाप्ति के पूर्ववर्ती एक कैलेण्डर वर्ष में उसने 240 दिन से अधिक कार्य किया है ?

बिन्दु संख्या 2 :– क्या विपक्षी द्वारा प्रार्थी को सेवा समाप्ति से पूर्व अधिनियम की धारा 25 एफ के अन्तर्गत एक माह का नोटिस अथवा नोटिस वेतन अथवा छंटनी प्रतिकर का भुगतान नहीं किये जाने से छंटनी अवैध है ?

बिन्दु संख्या 3 :– क्या प्रार्थी की सेवा समाप्ति करने से पूर्व कोई वरिष्ठता सूची नहीं बनाई गई तथा प्रार्थी से कनिष्ठ व्यक्ति को सेवा में रखते हुए प्रार्थी को नियुक्ति हेतु वरीयता नहीं दी गई ?

बिन्दु संख्या 4 :– अनुतोष ?

12. उभयपक्ष के तर्कों साक्ष्य एवं विधिक दृष्टान्तों में पारित विधि पर विचार के उपरान्त विचारणीय बिन्दुओं पर विनिश्च इस प्रकार है।

बिन्दु संख्या 1 :– प्रार्थी केदारनाथ ने अपने सशपथ कथन में कहा है कि उसकी नियुक्ति 22.2.90 को चतुर्थ श्रेणी कर्मचारी के पद पर अप्रार्थी प्रबंधक द्वारा की गई। 29.5.98 को उसकी सेवा समाप्त की गई तथा उसने प्रतिवर्ष 240 दिन से अधिक कार्य किया। प्रार्थी का यह भी कथन है कि उसने 22.2.90 से 29.5.98 तक की अवधि का रिकार्ड तलब कराया किन्तु अप्रार्थी ने उपस्थिति बाबत मस्टररोल फरवरी 90 से जुलाई 90 तक के ही प्रस्तुत किये हैं। बाकी मस्टररोल व सेवा समाप्ति के पूर्व के 12 माह की अवधि के कोई मस्टररोल कार्य दिवसों को छुपाने की दृष्टि से प्रस्तुत नहीं कियें। अप्रेल व मई 1998 के भुगतान वाउचर प्रस्तुत किये है जो केवल ओवरटाईम कार्य के है। प्रतिपरीक्षा में प्रार्थी ने कहा है कि उसकी हाजरी किसी भी मस्टररोल पर नहीं करवाते थे। पैसे देते थे, उसकी रसीद नहीं लेते थे। 240 दिन कार्य करने का सबूत विभाग के पास है। सन 1995–96 में उसका नियोजन का रजिस्ट्रेशन खत्म हो गया था। यहां यह उल्लेखनीय है कि प्रदर्श–एम 2 पर स्वंय के हस्ताक्षर ए से बी स्थान पर प्रार्थी ने स्वंय के होना स्वीकार किया है, परन्तु साथ ही यह भी कहा है कि यह भुगतान ओवरटाईम हेतु है। इसी प्रकार प्रदर्श–एम 3 पर भी स्वंय के हस्ताक्षर करते हुए भुगतान प्राप्त करना प्रार्थी ने स्वीकार किया है। ये दोनों प्रलेख भुगतान के वाउचर हैं, जिनके द्वारा प्रार्थी को 22.4.98 तथा 26.5.98 से 29.5.98 तक ठेके पर किये गये कार्यों का भुगतान विपक्षी द्वारा किया जाना प्रमाणित होता है। इन प्रलेखों में प्रार्थी द्वारा कार्यालय के कूलरों में पानी भरना, अधिकारी की घण्टी सुनना तथा अधिकारियों के मध्य फाईलें पहुचांने का कार्य ठेके पर किया जाना और उसका भुगतान प्राप्त होना स्वीकृत रूप से अंकित है। प्रार्थी ने यह भुगतान ओवरटाईम के रूप में प्राप्त किया हो, किसी प्रकार विश्वसनीय व स्वीकार्य नहीं है, क्योंकि इस सम्बन्ध में प्रार्थी ने न तो दावे में अभिवचन किया है। न हीं शपथ पत्र में लिखा है। इन प्रलेखों में ओवरटाईम का भुगतान किया जाना अंकित न होकर ठेके पर दिये कार्य का भुगतान किया जाना अंकित है। प्रार्थी ने भी स्वीकार किया है कि उसे 26.5.98 से 29.5.98 तथा 22.4.98 को किये कार्य की मजदूरी का पैसा मिला। प्रार्थी की इस स्वीकारोक्ति से यह प्रकट होता है कि उसने अप्रेल व मई 1998 में विपक्षी के कार्यालय में ठेके पर कार्य किया। यह स्थिति स्पष्ट रूप से दशार्ती है कि प्रार्थी उक्त अवधि में विपक्षी के अधीन सेवारत न होकर ठेकेदार अथवा ठेका श्रमिक के रूप में कार्यरत रहा। यदि प्रार्थी अप्रेल व मई 1998 में दैनिक वेतन भोगी कर्मचारी के रूप में नियोजित रहा होता तो उससे इसी अवधि में प्रदर्श–एम 2 व एम 3 के माध्यम से ठेके पर कार्य करवाने और उसका भुगतान किये जाने की कोई आवश्यकता ही उत्पन्न नहीं होती। इस प्रकार प्रार्थी का अप्रेल व मई 1998 में विपक्षी के नियोजन में होने का तथ्य खण्डित होता है। प्रदर्श–एम 4 से 11 के माध्यम से भी प्रार्थी ने इन मस्टररोल और वाउचर में अंकित अवधि के कार्य का भुगतान प्राप्त करना स्वीकार किया है। प्रार्थी 114 दिन से अधिक दिन कार्य करना तो कहता है किन्तु यह बताने में असफल रहा है कि किस किस वर्ष में उसने 240 दिन से अधिक किया है।

13. उपयुर्क्त तथ्यात्मक परिदृश्य में अब प्रार्थी के इस आक्षेप का परीक्षण किया जाना है कि विपक्षी ने आहूत किये जाने पर भी सेवा समाप्ति के पूर्व 12 माह के उपस्थिति रजिस्टर प्रार्थी के कार्य दिवसों को छुपाने के उद्देश्य से प्रस्तुत नहीं किये। प्रार्थी प्रतिनिधि का यह तर्क है कि चूंकि विपक्षी ने सारवान साक्ष्य को आधिपत्य में होते हुए प्रस्तुत नहीं किया है इसलिये विपक्षी के विरूद्ध प्रतिकूल उपधारणा की जावे और यह प्रमाणित माना जावें कि प्रार्थी ने सेवा समाप्ति के पूर्व एक केलेण्डर वर्ष की अवधि में 240 दिन कार्य किया है।

14. प्रार्थी द्वारा प्रस्तुत निर्णय गोरीशंकर बनाम स्टेट ऑफ राजस्थान में माननीय सर्वोच्च न्यायालय ने कहा है कि नियोजक द्वारा विवादित सेवा अवधि के मस्टररोल प्रस्तुत न करने के कारण उसके विरूद्ध प्रतिकूल उपधारणा किया जाना उचित है। एक अन्य निर्णय आर.एम.येल्लाटी बनाम असिस्टेन्ट एक्जीक्यूटिव इन्जिनियर में माननीय सर्वोच्च न्यायालय ने प्रथम तो यह कहा है कि प्रार्थी द्वारा सबल साक्ष्य से, 240 दिन सेवा पूर्ण करने के तथ्य का सिद्धिभार प्रार्थी पर ही है। मात्र स्वंय के शपथ पत्र एवं स्वंय के पक्ष में प्रस्तुत किये गये कथन इस हेतु पर्याप्त नहीं हैं। तदुपरान्त यह भी कहा है कि प्रबन्धन द्वारा प्रश्नगत अवधि से सम्बन्धित मस्टररोल प्रस्तुत न करने के सम्बन्ध में जब कोई स्पष्टीकरण नहीं दिया गया हो, तो कर्मकार का यह कथन कि उसने एक

केलेण्डर वर्ष की अवधि में 240 दिन कार्य किया है, उसके पक्ष में जारी प्रमाण पत्र के आधार पर समर्थित मानना चाहिये। इसी निर्णय के पैरा 18 में माननीय न्यायालय ने यह भी कहा है कि यह निणर्य सिद्धिभार के अन्तरण तथा प्रतिकूल उपधारणा किये जाने के सन्दर्भ में स्थापित नहीं किया जा रहा है।

15. इन दोनों निणर्यों में पारित विधि निश्चित रूप से मार्गदर्शक है। किन्तु इन निर्णयों में वर्णित तथ्य इस विवाद के तथ्यों से किन्चित भिन्न प्रकट होते हैं। हस्तगत विवाद में प्रार्थी के अनुसार उसने 29.5.98 तक विपक्षी के नियोजन में सेवारत होना कहा है, किन्तु साक्ष्य से यह प्रमाणित हुआ है कि प्रार्थी का यह कथन मिथ्या है, क्योंकि अप्रैल व मई 1998 में प्रार्थी ने ठेके पर क्रमशः 1 व 4 दिन तक विपक्षी का कार्य करते हुए मजदूरी का भुगतान प्राप्त किया है। इस स्थिति में विवादित सेवा अवधि जिसमें अप्रेल व मई 1998 के मस्टररोल भी सम्मिलित है का प्रस्तुतीकरण किसी प्रकार सुसंगत एवं संभव नहीं हो सकता है। क्योंकि प्रार्थी ने तो इस अवधि में मात्र 5 दिन ठेके पर कार्य किया। इसलिये 29.5.98 को विपक्षी द्वारा सेवा समाप्ति किये जाने का तथ्य प्रार्थी की स्वीकारोक्ति से ही खण्डित हो जाता है। इसी प्रकार प्रार्थी के पक्ष में विपक्षी के किसी पूर्व प्राधिकारी द्वारा विवादित सेवा अवधि से सम्बन्धित जारी किया गया प्रमाण पत्र भी इस विवाद में प्रस्तुत नहीं हुआ है जिसके अनुसमर्थन हेतु मस्टररोल की अपेक्षा की जावें। प्रार्थी तो यह वर्णित करने में भी सक्षम नहीं है कि उसने वास्तव में किस वर्ष में विपक्षी के अधिन 240 दिन कार्य किया। इसलिये दिनांक 16.4.2010 को प्रार्थी द्वारा एक प्रार्थना पत्र प्रस्तुत कर यह मांग करना कि 22.2.90 से 29.5.98 तक की उपस्थिति पंजिका विपक्षी से प्रस्तुत करवायी जावें, एक अनिश्चित एवं गूढ़ उद्देश्य से प्रस्तुत निवेदन प्रमाणित होता है, क्योंकि 29.5.98 से पूर्ववर्ती एक कैलेण्डर वर्ष में लगातार कार्यरत न होने तथा 29.5.98 को विपक्षी द्वारा सेवा समाप्ति नहीं किये जाने के तथ्य, प्रार्थी के अभिज्ञान में भलीभांति थे।

16. माननीय सर्वोच्च न्यायालय ने अपने पूर्ववर्ती निर्णय (स्वंय अधिकरण द्वारा) महेन्द्र एल जैन व अन्य बनाम इन्दोर डवलपमेन्ट अथोरिटी व अन्य (2005) (1) एस.सी.सी. 639 में एक पक्षकार के विरूद्ध प्रतिकूल उपधारणा किये जाने के सम्बन्ध में अपना अभिमत व्यक्त किया है। माननीय न्यायालय ने कहा है कि प्रतिकूल उपधारणा किये जाने का निष्कर्ष सदैव एकाधिक तथ्यों/गुणकों के विचारण पर आधारित होता है। उनमें से एक गुणक प्रत्येक विवाद में अन्तर्वलित तथ्य और परिस्थितियां भी होतें है। प्रार्थी ने अपने अभिवचनों में यह नहीं बताया कि किस वर्ष में उसने 240 दिन सेवा पूर्ण की और न हीं कोई विवरण दिया, बल्कि सामान्य रूप से लगभग 8 वर्षों की अवधि के अभिलेखों को विपक्षी से आहूत करवाया। ऐसी स्थिति में इस विवाद के तथ्यों और परिस्थतियों पर मनन के उपरान्त विपक्षी द्वारा पूर्ण अभिलेख प्रस्तुत न करने पर भी उसके विरूद्ध प्रतिकूल उपधारणा किया जाना न्यायोचित नहीं है। इस प्रकार प्रार्थी ने मात्र स्वंय के सशपथ कथनों के अतिरिक्त ऐसी कोई ठोस साक्ष्य इस अधिकरण के समक्ष प्रस्तुत नहीं की है जिसके आधार पर कथित सेवा समाप्ति तिथि 29.5.98 के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन की सेवा प्रार्थी द्वारा विपक्षी के अधीन किया जाना प्रमाणित हो। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

17. **बिन्दु संख्या 2 :–** इस बिन्दु के अन्तर्गत यह विचारणीय है कि क्या प्रार्थी की सेवा समाप्ति के पूर्व एक माह का नोटिस अथवा नोटिस के स्थान पर नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान विपक्षी द्वारा न किये जाने से प्रार्थी की सेवा समाप्ति अवैध है। इस सम्बन्ध में विपक्षी प्रतिनिधि यह स्वीकार करते है कि उन्होंने प्रार्थी को कोई नोटिस या नोटिस वेतन अथवा मुआवजे का भुगतान नहीं किया है। चूंकि विचारणीय बिन्दु 1 पर प्राप्त निष्कर्ष से यह स्पष्ट है कि प्रार्थी ने विपक्षी के अधीन 240 दिन से अधिक की सेवा अवधि होना प्रमाणित नहीं किया है, इसलिये प्रार्थी की कथित सेवा समाप्ति छंटनी होना ही प्रमाणित नहीं होता। इसलिये अधिनियम की धारा 25 एफ के अन्तर्गत उपबन्धित छंटनी के पूर्ववर्ती पालन की जाने वाली अनिवार्यताओं का निष्पादन भी आवश्यक नहीं रहता है। इस स्थिति में विपक्षी द्वारा प्रार्थी की सेवा समाप्ति के पूर्व अधिनियम की धारा 25 एफ अधिनियम के प्रावधानों का अनुपालन किया जाना अपेक्षित नहीं है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

18. **बिन्दु संख्या 3 :–** प्रार्थी ने अपने शपथ पत्र में यह तो कहा है कि उसकी सेवा समाप्ति करने के बाद नई नियुक्तियां की गई। किन्तु, उसे नियुक्ति हेतु कोई प्राथमिकता नहीं दी गई। प्रार्थी का यह भी कथन है कि अन्य व्यक्ति को नियुक्ति देने के लिये उसकी सेवा समाप्ति की गई, किन्तु प्रार्थी ने यह प्रमाणित नहीं किया कि उससे कनिष्ठ किस व्यक्ति को प्रार्थी की सेवा समाप्ति के पश्चात सेवा में रखा गया था। इस प्रकार प्रार्थी की साक्ष्य के अभाव में विपक्षी द्वारा अधिनियम की धारा 25 (जी) एवं (एच) तथा नियम 77 व 78 का उल्लंघन किया जाना प्रमाणित नहीं होता है। अतः यह बिन्दु भी प्रार्थी के विरूद्ध निर्णित किया जाता है।

19. **अनुतोष :–** चूंकि प्रार्थी तीनों ही विचारणीय बिन्दु स्वंय के पक्ष में प्रमाणित करने में विफल रहा है, इसलिये विपक्षी द्वारा की गई कथित सेवा समाप्ति वैध प्रमाणित होती है। और प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का कोई अधिकारी प्रमाणित नहीं होता है।

आदेश

20. अतः श्रम मन्त्रालय भारत सरकार द्वारा संदर्भित विवाद इस प्रकार उत्तरित किया जाता हैं कि प्रबंधन आकाशवाणी अलवर द्वारा प्रार्थी केदारनाथ शर्मा की सेवा समाप्ति वैध एवं न्यायोचित है और प्रार्थी कोई अनुतोष पाने को अधिकृत नहीं है।

21. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

22. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1724.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैनेजर, नेशनल एग्रीकल्चरल कॉआपरेटिव मार्केटिंग फैडरेशन ऑफ इण्डिया लिमिटेड, जयपुर राजस्थान और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 35/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.11.2019 को प्राप्त हुए थे।

[सं. एल-42025/079/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1724.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2017) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Agricultural Cooperative Marketing Federation of india , Jaipur Rajasthan & Others, and their workmen which were received by the Central Government on 30.11.2019.

[No. L-42025/079/2019-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 2–ए 35 / 2017

राधा मोहन चतुर्वेदी

पीठासीन अधिकारी

बेगाराम थालोड पुत्र श्री गोपीराम जी,
1–घ–17, जवाहर नगर,
जिला– जयपुर, राजस्थान

बनाम

1. मैनेजर, नेफेड ओ/आ नेशनल एग्रीकल्चरल कॉआपरेटिव मार्केटिंग फैडरेशन ऑफ इण्डिया लिमिटेड, तीसरी मंजिल, सहकार भवन, भवानी सिंह रोड, जयपुर 302001

2. जनरल मैनेजर (आई.यू.) नेशनल एग्रीकल्चरल कॉआपरेटिव मार्केटिंग फैडरेशन ऑफ इण्डिया लिमिटेड, नेफेड हाउस, सिद्धार्थ एन्क्लेव, आश्रम चौक, रिंग रोड, नई दिल्ली 110014

उपस्थित : प्रार्थी की और से कोई नहीं

अप्रार्थीगण : श्री अली हसन

: **पंचाट** :

दिनांक : 26. 11. 2018

1. प्रार्थी बेगाराम थालोड ने इस अधिकरण के समक्ष दिनांक 1.9.2017 को औद्योगिक विवाद अधिनियम की धारा 2 ए के अन्तर्गत स्टेटमेन्ट ऑफ क्लेम प्रस्तुत किया। प्रार्थी का कथन है कि अप्रार्थीगण ने दिनांक 9.10.15 को अवैध रूप से प्रार्थी को सेवामुक्त कर दिया। इस आदेश के विरूद्ध प्रार्थी ने समझौता अधिकारी एवं सहायक आयुक्त, केन्द्र सरकार, श्रम मंत्रालय, कोटा के समक्ष एक प्रार्थना–पत्र 13.12.16 को प्रस्तुत किया, किन्तु इस आवेदन पर न तो समझौता हुआ और न ही 45 दिन की अवधि में कोई कार्यवाही हुई। समझौता अधिकारी ने 21.7.17 को प्रमाण पत्र जारी कर प्रार्थी को सूचित किया कि वह अपना विवाद इस अधिकरण के समक्ष प्रस्तुत करें। प्रार्थी का यह कथन है कि वह श्रमिक की परिभाषा में आता हैं व विपक्षीगण उद्योग की परिभाषा में आते हैं। प्रार्थी की नियुक्ति 23.7.96 से कनिष्ठ सहायक के पद पर भरतपुर बायोफर्टिलाईजर फैक्ट्री के लिए की गई थी। तत्पश्चात प्रार्थी ने 5.8.96 से 31.7.2000 तक निरन्तर कार्य किया। फिर उसका स्थानान्तरण भरतपुर कर दिया गया। प्रार्थी को 9.10.15 को एक पत्र जारी किया गया और कहा गया कि उसकी सेवाएं समाप्त की जाती है और 3 माह का वेतन दिया जाता है। यह सेवामुक्ति आदेश अवैध है। प्रार्थी को सेवा से निकाले जाने से पूर्व औद्योगिक विवाद अधिनियम की धारा 25 एफ,जी एवं 25 एच तथा नियम 77 एवं 78 की अनुपालना नहीं की गई। भरतपुर यूनिट में 30 कर्मकारों में से केवल 14 को निकाला गया है जो भेदभावपूर्ण है और अप्रार्थीगण के द्वेषतापूर्ण और अनुचित श्रम व्यवहार की परिभाषा में आता है। अतः आदेश दिनांक 9.10.15 को शून्य एवं अवैध घोषित किया जाकर प्रार्थी को समस्त परिलाभों सहित सेवा में बहाल करवाया जावें।

2. अप्रार्थीगण ने अपने प्रतिउत्तर में स्वंय को अधिनियम के अन्तर्गत उद्योग की परिभाषा में न आना कहते हुए प्रार्थी को कर्मकार की श्रेणी में न होना कहा। उनका कथन है कि प्रार्थी की नियुक्ति कनिष्ठ सहायक के पद पर हुई थी। वह पदोन्नत होकर सहायक बन गये। सितम्बर 15 में प्रार्थी का वेतन 28,392 रूपये मासिक था। अप्रार्थी के अपने उपनियम है जिन्हें वह अपने सदस्यों के लाभ व कल्याण के लिये प्रयुक्त करता है। प्रार्थी को 20 वर्ष की सेवा अथवा 50 वर्ष से अधिक की आयु (जो भी पहले हो) के आधार पर 50 वर्ष की आयु पूरी होने पर नियमानुसार सेवामुक्त किया गया तथा 3 माह के नोटिस वेतन 84,576 रूपये का भुगतान भी किया गया जिसे प्रार्थी ने बिना आपत्ति प्राप्त किया। सेवामुक्ति आदेश सक्षम अधिकारी द्वारा जारी किया गया है, जो वैध है। अप्रार्थीगण का कोई आदेश द्वेषपूर्ण या अनुचित श्रम व्यवहार की परिभाषा में नहीं आता है अतः प्रार्थना–पत्र सव्यय निरस्त किया जाये।

3. यहां उल्लेख किया जाना आवश्यक है कि 1.9.17 को प्रार्थी का प्रकरण पंजीकृत करने के उपरान्त 8.11.17 तिथि विपक्षीगण की उपस्थिति हेतु नियत की गई। 8.11.17 को प्रार्थी अनुपस्थित रहा जबकि विपक्षीगण की और से अभिभाषक श्री राहुल कुमार का अभिभाषण पत्र प्रस्तुत हुआ।

4. तत्पश्चात दिनांक 16.1.18 व 5.4.18 को भी प्रार्थी अकारण अनुपस्थित रहा एवं विपक्षी की और से 5.4.18 को प्रार्थना–पत्र का प्रतिउत्तर प्रस्तुत किया गया।

5. आगामी तिथि 23.7.18 को भी प्रार्थी व विपक्षी दोनों अनुपस्थित रहे। इस स्थिति में मेरे पूववर्ती पीठासीन अधिकारी ने प्रार्थी को साक्ष्य हेतु अन्तिम अवसर इस आधार पर दिया कि वह विगत चार तिथियों पर लगाातार अनुपस्थित रहा है। आगामी तिथि 20.8.18 को भी प्रार्थी पक्ष अनुपस्थित रहा जबकि विपक्षी के अभिभाषक उपस्थित रहे। यहीं स्थिति दिनांक 22.11.18 को भी विद्यमान रहीं और प्रार्थी ने लगातार 6 तिथियों पर अनुपस्थित रहते हुए अपनी साक्ष्य प्रस्तुत नहीं की। विपक्षी ने इस स्थिति पर आक्षेप करते हुए प्रार्थी की साक्ष्य का अवसर समाप्त करने का आग्रह किया।

6. मैनें इस प्रकरण की समग्र परिस्थितियों पर विचार किया और अप्रार्थीगण के आग्रह को नितान्त औचित्यपूर्ण व स्वीकार्य पाया।

7. प्रार्थी ने अपने प्रार्थना–पत्र के माध्यम से जो औद्योगिक विवाद इस अधिकरण के समक्ष प्रस्तुत किया है उसके समर्थन में प्रार्थी ने कोई साक्ष्य प्रस्तुत नहीं की है। उसने उपस्थित होकर स्वंय का कोई शपथ–पत्र भी प्रस्तुत नहीं किया है जिस पर विपक्षीगण की ओर से कोई प्रतिपरीक्षा किया जाना सम्भव हो, और साक्ष्य का निष्कर्ष अधिकरण के समक्ष आ सके। इस तथ्यात्मक परिदृश्य में यह स्पष्ट हो जाता है कि प्रार्थी अपने प्रार्थना–पत्र के माध्यम से प्रस्तुत किये गये विवाद को अप्रार्थीगण के विरूद्ध

किसी प्रकार प्रमाणित करने में, साक्ष्य के अभाव के कारण सफल नहीं हुआ है। इस प्रकार प्रार्थी उसके विरूद्ध जारी कथित सेवामुक्ति आदेश दिनांक 9.10.2015 को अवैध एवं शून्य प्रमाणित नहीं कर सका है। इसलिये प्रार्थी द्वारा प्रस्तुत दावे का अभिकथन (स्टेटमेन्ट ऑफ क्लेम) किसी प्रकार स्वीकार्य नहीं है, जिसे निरस्त किया जाना चाहिये।

आदेश

8. अतः प्रार्थी द्वारा प्रस्तुत/प्रार्थना–पत्र दावे का अभिकथन साक्ष्य के अभाव में अस्वीकार कर निरस्त किया जाता है।

9. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1725.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, दमानी शिपिंग प्रा. लि., मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय मुंबई के पंचाट (संदर्भ संख्या 10/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.09.19 को प्राप्त हुए थे।

[सं. एल-42011/161/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. **1725**.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2014) of the Central Government Industrial Tribunal-cum-Labour Court Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Damani Shipping Pvt. Ltd., Mumbai & Others, and their workmen which were received by the Central Government on 12.09.19.

[No. L-42011/161/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/10 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DAMANI SHIPPING PVT. LTD.

The Director,
M/s. Damani Shipping Pvt. Ltd.,
205/206, Verma Chambers, II,
Homaji Street, Fort, Mumbai.

The Director,
M/s. Shipping Services
205/206, Verma Chambers, II,
Homaji Street, Fort, Mumbai

AND

THEIR WORKMEN

The Secretary,
Bharatiya Kamgar Karamchari
Mahasangh, Navalkar Lane,
1st Floor, Prathana Samaj, Girgaon
Mumbai – 400 004.

APPEARANCES:

FOR THE EMPLOYER : Ms. Anjali Purav, Advocate

FOR THE WORKMEN : Mr. H.G. Ramchandani, Advocate

Mumbai, dated the 28th August, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42011/161/2013 – IR (DU) dated 10.02.2014. The terms of reference given in the schedule are as follows :

> "*Whether the demand of Bharatiya Kamgar Karamchari Mahasangh for enhancement of the wages of Shri Dattu S. Dhumal, Sh. Dattaram R. Patil, Sh. Niranjan Khandare and Sh. Narayan S. Gawande at par with the wages revised as per Memorandum of Settlement dated 29.04.2008 signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union is legal, just and proper ? If so, what relief the workmen concerned are entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices. Second party workmen filed statement of claim Ex.7.

3. According to the concerned workmen they have been in the employment of M/s. Damani Shipping Pvt. Ltd. for more than 20 years. Though the appointment letters were issued to them by M/s. Damani Shipping Pvt. Ltd. They are being required to work for other sister companies floated and registered by Damani family by giving oral instructions and not in writing. Damani family has floated number of companies in the same filed with a sole object to come out from the clutches of applicable provisions of law and to avoid payment of taxes to its exchequer. 4 companies of different names floated by Damani family are as under:

1. Messers. Damani Bros.
2. Messers. Damport Transports Organisation.
3. Messers. Damani Shipping Pvt. Ltd.
4. Messers. Carrier Enterprises.

4. It is thus case of the concerned workmen though the names of the companies are different, Partners / Directors of the companies are in blood relation of Damani family. The names of Partners are as under:

1. Shri Dhirubhai C. Damani
2. Shri Himmatlal C. Damani
3. Shri Minesh Himmatbhai Damani
4. Shri Mahesh Himmatbhai Damani
5. Shri Ashwinbai C. Damani

5. It is then case of the concerned workmen that they are the members of Trade Union i.e. Bharatiya Kamgar Karamchari Mahasangh, a trade union registered under the Trade Union Act, 1926. Majority of the workmen employed by number of clearing and forwarding agent companies are the members of Transport & Dock Workers' union and majority of clearing and forwarding agent companies are the members of Bombay Customs House Agents Association. Number of periodical wage settlements were signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union. Last such settlement was dt. 29.4.08. Majority of clearing and forwarding agent companies and their workmen have accepted the terms & conditions of settlement dt. 29.4.08 and have accepted the

benefits of the same being fair & reasonable settlement. However, M/s. Damani Shipping Pvt. Ltd. illegally, vindictively and without any justification refused to extend financial & other benefits of the said settlement dt. 29.4.08 to the concerned workmen on baseless grounds. M/s. Damani Shipping Pvt. Ltd. was one of the Partners to the said settlement dt. 29.4.08 and as such the terms & conditions of the said settlement are binding on them which was legal and moral obligation on their part to extend the benefits of the same to second party workmen. However, due to illegal and unjustified act of the first party company concerned workmen have lost the considerable amount. Each workman has lost per month amount of Rs.7586/- and Rs.8679/- and amount of Rs.91,000/- per year approx. This is besides other benefits attributable to these second party workmen such as ex-gratia payment, LTC, medical benefits etc. as per the settlement dt. 29.4.08.

6. The concerned workman Shri Dattu S. Dhumal is entitled to receive Rs.538606/-, Shri Dattaram Patil is entitled to receive Rs.616209/-, Shri Niranjan Khandare is entitled to receive Rs.5,47,623/- and Shri Narayan Gavande is entitled to receive Rs.5,68,284/-. As such they are entitled to receive total amount of Rs.22,70,722/- for the period of 6 years commencing from 1.4.2008 till 31.3.2014.

7. According to them, each one of them have been deprived of the amount as shown below during the period from 1.4.2008 to 31.3.2014.

Name of workman	Gross salary as on 31.3.2008	Entitled to Gross salary as on 1.4.2008 as per settlement dated 29th April, 2008	Loss per month
Shri Dattu S. Dhumal	Rs.8,955.00	Rs.16,532.00	Rs.7,586.00
Shri Dattaram Patil	Rs.9,558.00	Rs.18,237.00	Rs.8,679.00
Shri Niranjan Khandare	Rs.9,736.00	Rs.17,449.00	Rs.7,747.00
Shri Narayan Gavande	Rs.8,951.00	Rs.16,955.00	Rs.8,004.00

8. The concerned workmen are therefore asking for financial benefits and other benefits in view of settlement dated 29.04.2008 signed between Bombay Customs House Agents Association and Transport & Dock Workers' union w.e.f. 1.4.2008 which amounted to Rs.22,70,722/- along with interest @21% per annum on the total amount of dues w.e.f. 1.4.2008 till the date of payment.

9. First party company resisted the claim by filing written statement Ex.21 contending therein that the concerned workmen are not at all in the employees of first party No.1 company and there is no employer employee relationship between first party No.1 company and these workmen.

10. According to the first party No.1 company, the second party union has raised demand against two companies i.e. first party No.1 company and first party No.2. Both these companies are separate and distinct legal entities. In statement of claim second party workmen stated that they are the workmen in the employment of first party No.2. There is no decision or order or award or direction of the court or tribunal that these workmen are the employees of first party No.1 company.

11. It is then case of the first party No.1 company that the memorandum of settlement dt. 29.4.08 which was signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union is not applicable to the company or to workmen of first party No.1 company. The said settlement is not signed by the Association or by the union in the representative capacity and the first party No.1 company has neither signed nor accepted the said settlement. The settlement signed between the Association and Transport & Dock Workers' union is applicable only to those Customs House Agents who accepts the same by giving consent. Therefore the concerned workmen are not entitled to receive any financial benefits of the said settlement dt. 29.4.08. Neither they are in the employment of the employer who is Customs House Agent nor they are the members of Transport & Dock Workers' union.

12. According to the first party No.1 company, Damani family is having multifarious business which are conducted by the companies which are independent and distinct companies. There is no prohibition under the law that the family members cannot have different companies for different types of business activities. Since the settlement dt. 29.4.08 is not at all binding on first party No.1 company there is no question of committing willful breach of the said settlement. With this it is the case of the first party No.1 company that there is no employer employee relationship between the first party No.1 company and the concerned workmen. As such no relief can be granted to the concerned workmen as prayed by them. First party No.1 company has thus sought the dismissal of reference.

13. First party No. 2 filed say to statement of claim Ex.22 contending therein that first party No.2 is separate legal entity having separate nature of business than that of first party No.1 company. It is a shipping freight broker and providing manpower services. It is neither a Customs House Agents nor it is member of Bombay Customs House Agents Association.

14. It is then contended by the first party No.2 that it is not concerning the major port and therefore the appropriate Govt. of the same is State Govt. and not Central Govt. As such so far as first party No.2 is concerned Central Govt. have no jurisdiction to try or entertain any demand raised on behalf of the concerned workmen who are in the employment of the company for which the appropriate Govt. is State Govt.

15. According to the first party No.2 the concerned workmen are the employees employed in the services of first party No.2. For any dispute between the company and its employees. The employees approached the Labour & Industrial Courts constituted under the State of Maharashtra. Mr. Dattu S. Dhumal who is one of the concerned workman has also filed complaint of unfair labour practice before Labour Court Mumbai being complaint ULP No. 203 / 2016. Prior to that Mr. Dattu S. Dhumal had filed complain of unfair labour practice before Industrial Court Mumbai being complaint No. 289 / 2016 against first party No.2 who is the employer of Mr. Dattu S. Dhumal. As such the concerned workmen are aware about the fact that they are the employees of first party No.2 company of which the appropriate Govt. is a State Govt. and therefore they have not filed statement of claim against first party No.2 company who was their employer.

16. In view of this, following issues are framed at Ex.10. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the second party workmen in the present matter are entitled to the revision as per Memorandum of Settlement dated 29.4.2008 signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union ?	No
2.	Whether the second party workman are entitled to the amount as claimed by them in the present matter ?	No
3.	What Order ?	As per final order

Reasons

Issue No.1 :-

17. So far contentions go, it is mainly the contention of the concerned workmen that they have been in the employment of M/s. Damani Shipping Pvt. Ltd., the first party No.1 company for more than 20 years and that the appointment letters were issued to them by M/s. Damani Shipping Pvt. Ltd., the first party No.1 company. Since the first party No.1 company has denied the employer employee relationship in between the first party No.1 company and the concerned workmen, it is for the concerned workmen to prove and establish that they are the employees of first party No.1 company.

18. For, it is explicit, that there is no appointment letters on record to show that the concerned workmen are appointed by first party No.1 company. On the contrary in the statement of claim the concerned workmen have stated that their names are shown as employees in the list of the workmen of M/s. Shipping Services i.e. the first party No.2 company. It is precisely the case of first party No.2 company that the concerned workmen are their employees and not of first party No.1 company.

19. Realising this difficulty the Learned Counsel for the concerned workmen submitted that the Damani family floated the number of companies such as

1. Messers. Damani Bros.
2. Messers. Damport Transports Organisation.
3. Messers. Damani Shipping Pvt. Ltd.
4. Messers. Carrier Enterprises.

20. Though the companies are different, Directors / Partners of all the companies are in blood relation of Damani family. Submission is to the effect that the concerned workmen were orally instructed to work for other sister companies floated and registered by Damani family. The fact remains that the concerned workmen were working with M/s. Shipping Services i.e. the first party No.2 company and their names as workmen were shown in the list of workmen of M/s. Shipping Services i.e. the first party No.2 company.

21. In the context if we see the evidence of Mr. Dattu S. Dhumal, one of the concerned workman, he admits in his cross examination that he was getting salary from M/s. Shipping Services. Admittedly Mr. Narayan Gawande, the other concerned workman is getting the salary from the first party No.2 company i.e. M/s. Shipping Services. They submitted application for leave before employer M/s. Shipping Services i.e. the first party No.2 company. This is explicit from leave application Ex.33 to 35. It is also clear from his cross examination that one of the concerned workman, Mr. Dattaram Patil is retired on and from 1.6.15 and the letter in respect of his retirement is issued by M/s. Shipping Services vide Ex.37. Admittedly this workman Mr. Dattaram Patil was getting salary from M/s. Shipping Services. Even in respect of documents pertaining to the retirement benefit of Mr. Patil are concerned, these are the documents given by M/s. Shipping Services. Admittedly the retirement dues were given to Mr. Patil by M/s. Shipping Services and he was signing the muster of M/s. Shipping Services. He was getting the salary from M/s. Shipping Services.

22. In respect of other workmen namely Mr. Narayan Gawande and Mr. Niranjan Khandare, it is admitted by this witness that they were also getting the salary from M/s. Shipping Services. Mr. Khandare who has resigned from services submitted his resignation letter to M/s. Shipping Services and that M/s. Shipping Services settled dues of Mr. Khandare which were received by him on 29.3.14. In view of all these glaring admissions, it is clear that the concerned workmen were in the employment of M/s. Shipping Services and all the while they were getting wages and salary from first party No.2 company i.e. M/s. Shipping Services.

23. There is one more aspect as regards this issue. Admittedly this witness Mr. Dhumal filed complaint before Labour Court Mumbai being complaint ULP No. 203 / 2016 and before Industrial Court Mumbai being complaint No. 289 / 2016. Both these complaints are filed by him against his employer M/s. Shipping Services, first party No.2. Admittedly by him, his services came to be terminated by M/s. Shipping Services and he sought relief of reinstatement as against his employer M/s. Shipping Services and Proprietor of M/s. Shipping Services. This would again show that he even admitted in his pleadings before the Labour Court & Industrial Court that he is the employee of M/s. Shipping Services i.e. the first party No.2 company and not that of first party No.1 company i.e. M/s. Damani Shipping Pvt. Ltd.

24. Not only this but another workman Mr. Patil admits in his cross examination that he being the employee of M/s. Shipping Services, his PF is deducted by M/s. Shipping Services from 1.6.90 and even after the retirement, M/s. Shipping Services paid him the service benefits.

25. Same is the case when the another workman Mr. Niranjan Khandare admits in his cross examination that after retirement from M/s. Shipping Services from 1.3.14 he received the benefits from M/s. Shipping Services. As such nowhere in the evidence the concerned workmen have stated that they are the employees of M/s. Damani Shipping Pvt. Ltd. What is stated by them is that M/s. Shipping Services is a sister concerned of M/s. Damani Shipping Pvt. Ltd. and therefore they are the employees of M/s. Damani Shipping Pvt. Ltd. This contention is not acceptable since the documentary evidence on record clearly establishes that the concerned workmen are the employees of M/s. Shipping Services and so far as M/s. Shipping Services and M/s. Damani Shipping Pvt. Ltd. are concerned, they are distinct entities though their Directors / Partners are from Damani family.

26. Even then the Learned Counsel for the concerned workmen refers to documents C – 15 & 16 below Ex.58 to submit that Dock Entry permit issued by BPT mentions name of M/s. Damani Shipping Pvt. Ltd. as the company's name for issuing Dock Entry permit to Mr. Narayan Gawande. In my considered view that itself cannot be document to show that Mr. Narayan Gawande is an employee of M/s. Damani Shipping Pvt. Ltd. Dock Entry permit issued by BPT for the purpose of entering in the premises and that is not the document to show that the particular employee is the employee of particular company especially when there are documents to show that the concerned employees have been working in M/s. Shipping Services and they were getting the salary from M/s. Shipping Services. The salary certificate of Mr. Patil at B – 14 below Ex.58 though mentions that M/s. Shipping Services is a sister concern of M/s. Damani Shipping Pvt. Ltd. but then it clearly shows that Mr. Patil is working with M/s. Shipping Services from 1.4.19 and he received the wages / salary from and for M/s. Shipping Services.

27. Considering all these documents and the evidence of the concerned workmen I find that the concerned workmen are the employees of first party No.2 company i.e. M/s. Shipping Services. There is no employer employee relationship between first party No.1 company i.e. M/s. Damani Shipping Pvt. Ltd. and the concerned workmen and as such both these companies i.e. first party No.1 company and first party No.2 company are different legal entities.

28. The question creeps in whether in such circumstances the concerned workmen are entitled to the revision as per memorandum of settlement dt. 29.4.08 signed between Bombay Customs House Agents Association and Transport & Dock Workers' union. The question is whether this memorandum of settlement is binding on first party No.1 company ?

29. Having concluded that the concerned workmen are in the employment first party No.2 company, it is now clear from the evidence of one of the concerned workmen Mr. Patil that M/s. Shipping Services is not the Customs House Agent. Admittedly the company which is Customs House Agent can only be a member of Bombay Customs House Agents Association. Since M/s. Shipping Services, first party No.2 company is not Customs House Agent, it cannot be the member of Bombay Customs House Agents Association. The settlement on the basis of which the concerned

workmen are claiming benefits was in between Bombay Customs House Agents Association and Transport & Dock Workers' union [Ex.45]. This document Ex.45 does not bear signatures of first party No.1 company i.e. M/s. Damani Shipping Pvt. Ltd. and also first party No.2 company, M/s. Shipping Services. When M/s. Shipping Services is not the member of Bombay Customs House Agents Association. When it is not signatory of the said settlement Ex.45 then in that circumstances the said settlement is not binding on employer of the concerned workmen M/s. Shipping Services. There is no document on record to show that the settlement signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union were made applicable to clear and forwarding agenct companies.

30. The fact remains that the employer of the concerned workmen M/s. Shipping Services was not the member of Bombay Customs House Agents Association. Even the settlement Ex.45 does not bear the signature of first party No.1 company or first party No.2 company and therefore the settlements signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union were not made applicable to first party No.2 company i.e. the employer of concerned workmen. In view of that the concerned workmen are even not entitled to revision as per memorandum of settlement dt. 29.4.08 signed between Bombay Customs House Agents Association and Transport & Dock Workers' union. This issue is therefore answered accordingly as indicated against it.

Issue No. 2 & 3 :-

31. In view of my finding to issue No.1, second party workmen are not entitled to relief claimed by them. The reference is liable to be rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 28.08.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1726.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 10/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/92/1996–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1726.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2003)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 11.09.2019.

[No. L-22012/92/1996 –IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/10/2003 Date: 21.08.2019

Party No.1 : The Sub Area Manager,
Western Coalfilelds Ltd.,
Saoner Sub Area, Saoner,
Distt. Nagpur.

Versus

Party No.2 : Shri Gangadhar Balmukund Gajbhiye
R/o Jaibhole Nagar,
Near Convent School,
Po: Khaperkheda, Distt. Nagpur.

AWARD

(Dated: 21st Aug, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their workman Shri Gangadhar Gajbhiye, for adjudication to CGIT-Cum-Labour Court, Jabalpur, as per letter **No.L-22012/92/96-IR (C-II) dated 14.03.1997,** with the following schedule:-

"Whether the action of the management of Western Coalfields Ltd., Nagpur Area in dismissing Shri Gangadhar Balmukund Gajbhiye, T.R. General Mazdoor Category-I from services w.e.f. 24.01.1994 is legal & justified? If not, to what relief the concerned workman is entitled?"

Subsequently the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Gangadhar Gajbhiye,('The workman" in short), filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as per the statement of claim is that, he was a regular workman of Pipla colliery and he was not a workman of Saoner colliery and he was transferred to Saoner colliery temporarily to work for one month by an office order and while he was working at Pipla Colliery, he sustained fractured injury on his left foot and in 1990, he was declared unfit by the Medical Superintendent and in 1993, he received the copy of the conversion order of Pipla Mine and he submitted his joining report at Pipla Mine. The workman has prayed to give him justice.

3. The party no.1 in the written statement has pleaded inter-alia that the workman while working as a loader in Pipla colliery, on 07.06.1988, sustained injury on his left leg and remained on "injury on duty" from 07.06.1988 to 13.06.1988 and then he was examined by the company's doctor and declared fit for original job and after that, he worked for 72 days as piece rated loader during the period from 19.06.1988 to 31.12.1988 and for 194 days (wrongly mentioned as 154 days in paragraph 4 of the written statement) in 1989 and was regularized as permanent loader and after January 1990 till 06.11.1992, he remained unauthorized absent without permission or prior information and during the period of such unauthorized absence, on16.03.1990, he approached the colliery Manager, Pipla Mine for his re-medical examination by the competent authority and his application was forwarded to WCL Screening Committee on 27.03.1990 for re-medical examination and accordingly, he was again examined by Screening Committee/Medical Superintendent, WCL Nagpur Area on 03.04.1990 and he was declared unfit for loader's job and the workman requested the management for alternate light duty on surface and did not want to accept the job of TR in underground and management of Pipla colliery could not accept his contention of providing surface light job, however, the workman was offered an alternative job in underground, but he refused to accept the same and approached the ALC (C), Nagpur on 20.12.1990 by filing an application alleging non providing of light surface duty and the ALC (C) after considering the offer given by the management, persuaded the workman to accept the offer and to join the duty and closed the conciliation proceeding on 29.04.1991, finding no merit in the case of the workman, but thereafter, the workman instead of joining duty as offered by the management, preferred an appeal to the General Manager, mentioning his willingness to join back as piece rated loader and to allow him to join duty as a loader, so management referred his case for medical examination and he was medically examined by Area Medical Committee on 09.05.1991 and he was declared fit for original duty, due to natural improvement, so he was advised to report for duty to superintendent of Mines/Colliery Manager, Pipla colliery and

inspite of his own request and advice of local management, he did not report for his job of piece rated loader and asked to provide alternate light job on surface and served notice to CMD (WCL) by letter dated 21.08.1992 stating that, if he would not been provided surface light duty, he would resort to hunger strike in front of the Colliery Manager, Pipla Colliery w.e.f. 01.09.1992 and the workman was declared medically fit for the original job of loader and was willing to work as loader and due to non-availability of surface job, surface light job could not be provided to him, but inspite of the same, the workman started the proposed hunger strike w.e.f. 01.09.1992 and even after persuasion/assurance given by the management, he did not join the duty, but lastly, he himself called off the hunger strike and the workman gave threatening notice to CMD, WCL, Nagpur on 24.09.1992 stating that if he could not be provided surface light job, he would again start hunger strike in front of the office of the Colliery Manager, Pipla Mine w.e.f. 07.10.1992 and seeing his attitude, behavior and approach, no union supported him or pleaded his case and he was also not allowed by the State Authorities to start the proposed hunger strike on 07.10.1992 and on 08.10.1992, the wife of the workman obstructed the work of Pipla Mine for about four hours i.e. from 8. A.M. to 12 noon in the first shift and after due discussion at WCL Headquarters, the workman was offered surface light job at Saoner Mine of Nagpur Area, which is situated 15 KM from Pipla Colliery, on 06.11.1992 for an initial period of one month and he joined duty at Saoner on 09.11.1992 and on expiry of one month's alternative surface time rated job, further extension of 15 days was given to the workman vide office order dated 12.12.1992, pending decision of WCL Headquarters, but the workman refused to accept the extension order and asked for posting at Pipla colliery itself, instead of Saoner project and he distributed printed pamphlets alleging atrocity on him by the management of WCL. The further case of the party no.1 is that on 01.01.1993, sanction of competent authority was conveyed for conversion of the workman from piece rated to time rated temporarily and such arrangement was approved till the decision of the Apex Medical Board in respect of the workman and in the light of the letter dated 01.01.1993, another officer order dated 18.01.1993 was passed and the workman was temporarily posted at Saoner on his request, until the decision of his case is taken by the Apex Medical Board and he was directed to report for duties to Additional CME/Sub Area Manager, Saoner, but the workman failed to report for duty, so as per order dated 13.03.1993, the offer of his engagement as Mud pallet Mazdoor was withdrawn and the workman vide letter dated 18.03.1993 was advised to report to the Additional CME/SAM, Saoner project and the said letter was served on the workman through peon book and vide office order dated 13.04.1993, the workman was intimated to appear before the Medical Board on 19.04.1993 at 9.30 A.M. at Rajib Ratan hospital, Ghugus for his medical examination, but despite of receipt of the said letter, the workman failed to appear before the Medical Board and the workman was provided surface light job of Mud pellet worker at Saoner vide office order dated 25.05.1993, pending decision of the Apex Medical Board, but the workman refused to accept the offer and to join at Saoner and on refusal to accept official order, disciplinary action for his unauthorized absence and refusal to accept official communication was initiated and finally on 15.06.1993, he appeared before the Apex Medical Board and the Board recommended to give the workman alternative job and as per the recommendation of the Medical Board and approval of the competent authority for his conversion from piece rated loader's job to time rated category, the workman was advised vide letter dated 26.08.1993 to continue to his job at Saoner project, but he refused to accept the communication and finally the same was sent by RPAD post and copy of the letter was also served on the workman through peon book and thereafter, the workman changed his mind and requested for his posting at Mines rescue station at Nagpur, instead of Saoner and threatened the Management to launch hunger strike with his family, in case of not considering his request and higher management was informed about the attitude of the workman and the management of Saoner Sub Area issued charge sheet dated 02.08.1993 for continuous unauthorized absence w.e.f. 18.01.1993 and the workman did not submit any reply to the said charge sheet, so Management decided to conduct a departmental enquiry and appointed Shri T.K.N.P. Bhattacharya as the enquiry officer to conduct the enquiry and memo of enquiry was issued to the workman advising him to appear in the enquiry and to avail assistance of a co-worker, but he failed to avail the opportunity given to him, inspite of repeated reminders and sittings fixed by the enquiry officer and the workman did not attend the enquiry, even though there was publication of the memo of enquiry in the daily newspapers and Management proved the charges against the workman by adducing oral and documentary evidence in the enquiry and the enquiry officer submitted his enquiry report holding the charges leveled against the workman to have been proved and the competent authority agreed with the findings of the enquiry officer and by order dated 24.01.1994, terminated the services of the workman and such order was also published in the daily

newspaper and after dismissal from services, the workman submitted an appeal to higher authorities for re-instatement and the competent authority favorably considered his appeal and approved his reinstatement as general mazdoor category –I, subjected to his entering into a settlement in form 'H' and accordingly, a settlement in form 'H' was prepared on 02.05.1995 at Area Headquarters, Nagpur and the workman was asked to sign the said settlement, but he refused to sign the same and demanded for reinstatement without signing the settlement and as the workman was adamant in arriving at a settlement before the ALC during conciliation, the conciliation proceedings failed and failure report was submitted to the government and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the validity of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 05.03.2007, the departmental enquiry held against the workman was found to be proper, legal and following the principles of natural justice.

5. On hearing of both the parties, my predecessor passed an order on 20.04.2012, which was challenged before the Hon'ble High Court in Writ Petition NO. 3424/15 and passed an order on 04.08.2016 with following directions:-

"The award dated 20.04.2012 in Case No. CGIT/NGP/10/203 is set aside. The proceedings are remanded to the Central Government Industrial Tribunal/Labour court, Nagpur for fresh adjudication in the light of observations made in this judgment".

After hearing both the parties and giving for fresh opportunity for hearing and also giving a chance to produce documents.

6. **Point of determination:**

i. Whether dismissing of the workman from the service w.e.f. 24.01.1994 is legal and proper?

ii. Whether the workman is entitled to any other relief?

Reason for determination:

7. At the time of argument, it was submitted by the learned advocate for the workman that, the workman during the course of his employment sustained grievous injury on his left leg on 07.06.1988, so he was on sick leave from January, 1990 to 06.11.1992 and remained at Walni hospital and he was declared unfit by Screening Committee at Walni hospital on 03.04.1990, but the unfit certificate was not given to him. The workman requested the Management to provide him light work, but he was not provided the light work, therefore, the workman approached the ALC by filing complaint on 22.10.1990 and as there was no compromise, the conciliation proceeding was closed by order dated 29.04.1991 and the workman requested the General Manager to provide him work and he was given job w.e.f. 09.05.1991 and as there was severe pain in his left leg, he was unable to perform his job properly, and he made several representations during the period from 01.05.1991 to 01.09.1992 to provide him light work, but the same were not considered by the Management.

8. According to the workman on 24.09.1992, he again requested to CMD to provide him light work, but no light work was provided, he went on hunger strike on 07.10.1992 and the workman was provided the work of mud pallet maker at Saoner Mine by order dated 06.11.1992 for 30 days and thereafter, he was again transferred to Pipla Mine at his original post of loader by order dated 09.12.1992 and the workman was orally assured of providing light job, but as no light job was provided. According to the workman, he never received the notice of the departmental enquiry conducted against him and such enquiry was conducted behind his back and prior of his dismissal, no show cause notice was issued and copy to the enquiry report was not supplied and for that, the enquiry was bad in law and the order of dismissal dated 24.01.1994 was also not served to the workman, but the same was published in the news paper, "The Hitvada" and the workman came to know about the same from police agency and therefore, the punishment of dismissal is arbitrary and disproportionate and the same is liable to be set aside and the workman is to be reinstated in service with continuity and full back wages.

9. On the contrary, learned advocate on behalf of the Management relied on the following case laws:-

i. Viveka Nand Sethi vs. Chairman, J&K Bank LTD and Others (2005) 5 Supreme Court Cases 337.

ii. M.P State Electricity Board vs. Jarina Bee Supreme Court 2003-III-LLJ

iii. Bhojabhai Danabhai Rabari vs. State of Gujrat 2012-I-LLJ Gujrat 174.

And argued that, workman remained unauthorized absent without permission, even after declared him fit for original job by the Company doctors and after that, order of dismissal was passed against the workman.

10. On perusal of the record, it appears that, my predecessor passed award on 20/04/2012, which was challenged before the Hon'ble High Court through Writ Petition No. 3424/2015 and the Hon'ble High Court passed an order in this Writ Petition on 04.08.2016 and held that, "The award dated 20.04.2012 in case no. CGIT/NGP/10/2003 is set aside. The proceedings are remanded to the Central Government Industrial Tribunal/Labour Court, Nagpur for fresh adjudication in the light of observations made in this judgment."

11. After considering both parties argument, now I want to see the evidence of the workman first. Workman Mr. Gangadhar Gajbhiye (P.W.1) in his evidence on affidavit supported his statement of claim and in his cross examination he admitted that, he suffered from injury on left leg in para no.9 and also admitted that, he was medically examined and declared fit for duty, but according to him he worked on surface. He also admitted that, he had applied for alternate job i.e. Light Job on surface, but he denied that, management was willing to give him Light Job in underground. He also admitted that, in para 10 of his cross examination that, woman as well as unfit employee are not allowed to work in underground mines. He also denied that, he was willing to work in underground as time rated worker.

12. Workman, Gangadhar Gajbhiye, P.W.1 in para no. 10 of his cross-examination also admitted that, he appealed before the G.M. and on that basis, he was again examined by Medical Board in the year 1993, but he asserted that, he was willing to work on surface, not in underground. He also admitted that, "In the year 1993, Medical Board of WCL declared him fit for original job." He also admitted that, he had given Strike Notice to the CMD of WCL and the entire worker followed him and they went on Strike for about 7 hours and this fact was admitted by the Party No. 1 in para 10 & 15 of their written argument, but according to the Party No. 1, they offered him surface job at Saoner Project, but the workman denied that, he did not go to Saoner.

13. The workman also admitted that, he does not know English, so he is not in position to say that, "What is mentioned in Exhibit M-33------between management and me, there was a settlement, but settlement was not proper, so I refused to sign the same." He also denied that, Party No. 1 offered him surface job. He also denied that, Party No. 1 told him that, light job is not available on surface. He denied that, he did not go to Saoner and he was absent from duty and did not apply for leave for that period and he also denied all departmental proceedings.

14. Shri Gangadhar Gajbhiye, P.W.1 in para 11 of his cross-examination asserting that, he has no knowledge about the departmental enquiry or charge sheet or the notice of the departmental enquiry, which was published in the daily newspaper, but the Party No. 1 argued in para nos. 12 to 16 that, departmental enquiry was conducted and the workman did not participate and also argued that, the workman did not join his new posting at Saoner mines. After perusal of the written argument, it appears that, Party No. 1 relied M-8 to M-17, but these documents were not prove in his evidence, so adverse inference can be drawn against the Party No. 1.

Now, I want to see the legal position:-

i. "The High Court observed that, on reinstatement, back wages could not be automatically granted and it was the discretion of the Court to grant them.

It was held appellant was not entitled to back wages even though relief of reinstatement was granted to him."

ii. "Even when the unfortunate workman died during the pendency of matter before the Industrial Court in appeal, the appellant employer board contested its liability to pay the respondent-widow of the workman full back wages, fastened on it by the Industrial Court.

The Supreme Court allowed it, observing that award of full back wages was not the natural consequence of setting aside a removal from service."

iii. "Appellant workman did not submit any explanation for his absence satisfying management that he had not taken up any other employment or avocation and that he had no intention of not joining duties, as required by cl. 2 of the settlement.

Moreover, the application for grant of medical leave, without annexation of proper medical certificates, that too much after period of leave was over, could not be considered a bona fide act on part of appellant – Hence, held, said clause was correctly relied on by respondent Bank to voluntarily retire appellant workman."

iv. "Held, though principles of natural justice were required to be complied with, a full-fledged department proceeding was not required to be initiated – A limited enquiry as to whether employee concerned had a sufficient explanation for his absence, would be enough."

v. "Natural justice – Application of principles of – Scope and considerations involved – Admitted facts – Held, when facts are admitted, an enquiry would be an empty formality."

vi. "A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do amounts to sufficient compliance with the requirements or the principles of natural justice."

15. The Hon'ble High Court in para 3 & 5 of his judgment dated 04.08.2016 held that, Hon'ble Supreme Court in AIR 1998 SC 2722 service of show cause notice has been held to be necessary by having the same actually served. Publication of show cause notice in newspaper in those facts has been frowned upon and judgment of learned Single Judge in 2009 Mh.L.J 294 Luthfuddin Sheikh (supra) failure to furnish report of the Inquiry Officer has been held to be voilative of principles of natural justice thereby vitiating the final order.

16. In case law—Delhi Transport Corp. Vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that" Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid." On the basis of principles laid down in case laws:- Engineering Laghu Udhyog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper." These principles are also laid down by Hon'ble Supreme Court in case laws- Punjab Urban Planning & Development authority Vs. Mandip Singh (2016) 7 SCC-571, UPSRTC Vs. Gopal Shukla (2015) SCC 603, Sanjay Singh Vs. National Seed Corporation (2017) 13 SCC 269, V.D. Vegad Vs. State of Gujurat (2017) 2 SCC 508 and Angikr Oriental (Arbic) Higher Secondary School Vs. A. Harnoon (2017) 2 SCC 510.

The Hon'ble Supreme Court in above case laws: Divisional Manager, New India Assurance Company Limited versus A. Sankaralingam, held that, "The preponderance of judicial opinion is that a workman working even on a part-time basis would be entitled to benefit of Section of 25-F of the Act".

17. Judging the present case in hand and considering the principles laid down in above case laws, my humble opinion is that, there is violation of principles of natural justice thereby vitiating the final order. It also appears that the workman did not know English but notice was published in the newspaper "The Hitvada". Order of termination dated 24.01.1994 after 25 years; workman is not in position to work at his original job. So, the workman is entitled to 2.5 lakhs Lumpsum compensation in lieu of reinstatement and back wages, but he is not entitled to any other relief. Hence, it is ordered.

ORDER

The action of the management of Western Coalfields Ltd., Nagpur Area in dismissing Sh. Gangadhar Balmukund Gajbhiye, T.R. General Mazdoor Category-I from services w.e.f. 24.01.1994 is not legal & justified. He is entitled Lumpsum compensation of Rs. 2,50,000/- (Rupees two lakhs and fifty thousand only) in lieu of reinstatement and back wages, which is payable within one month from the publication of this award in official Gazette, failing to which, amount due to workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. He is not entitled for any further relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2019

का.आ. 1727.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 33/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/110/2017–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2019

S.O. 1727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 11.09.2019.

[No. L-22012/110/2017 –IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/33/2017-18 Date: 20.08.2019

Party No. 1: Chief General Manager,
Western Coalfields Limited,
Pench Area, Parasia, Distt – Chhindwara.
Chhindwara.

V/s

Party No. 2: Mahamantri,
Rashtriya Collieries Mazdoor Sangh (INTUC)
Chandameta Distt-Chhindwara,
Chhindwara.

AWARD

(Dated:-20th August, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their Union, Rashtriya Collieries Mazdoor Sangh (INTUC) for adjudication, as per letter **No.L-22012/110/2017-IR (CM-II) dated 11.12.2017,** with the following schedule:-

"**क्या मुख्य महा प्रबंधक, वेकोलि, पेंच, क्षेत्र, परासिया, जिला - छिंदवाडा व्दारा श्रीमति विनिता सनोडिया, हेल्पर, क्षेत्रिय कर्मषाला, चांदामेटा को प्रबंधन व श्रम संध के मध्य हुए समझौते दिनांक** 02.11.1992 **के अधार पर लिपिकीय ग्रेड में नियमित व तदानुसार पदोन्नति लिपिकीय ग्रेड** - 3 **में ना करना उचित है? यदि नहीं तो कामगार श्रीमति विनिता सनोडिया क्या अनुतोष पाने का अधिकारी है ?**"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which, the workman/Union namely, Rashtriya Collieries Mazdoor Sangh (INTUC),("The Union" in short) did not file statement of claim and the management of Western Coalfields Limited ("Party no.1" in short) filed the exparte written statement.

3. According to the reference, there was an agreement between management and the union regarding the promotion for the post of Grade-III of the workman as per stated above. Union or petitioner was not present. They neither filed any statement of claim nor any plaint. On the contrary; management filed written statement on 26.07.2019.

4. In written statement management/Party No.1 asserted that, service condition of coal mines worker are governed by the National Coal Wages Agreement (NCWA) Cadre Scheme and Standing Orders are the part of the service condition. JBCCI issues implementation instruction generally known as (II) for the purpose of clarification and implementation of provision of NCWA, company policy. According to Party No.1, Cadre Scheme is formulated for all categories for the purpose of promotion. Designation, pay scale/category, minimum qualification, eligibility for promotion and mode of promotion are given in the cadre scheme circulated vide II and Head Quarter also issues instruction from time to time in the light of said Cadre Scheme.

5. According to the management/Party No. 1, for the promotion of any post, there is provision for written test, which is followed by interview, but workmen was not selected for the post of Clerk Grade-III. According to Party No. 1, Late Mr. Vijaykumar was employed as a trammer and due to his death, his daughter, Kumari Vinita was given compassionate appointment in the post of General Mazdoor by the order dated 16.01.2006. Claimant applied for the promotion for the post of Clerk Grade III, but she did not appear in written test and she did not pass computer test, so she was not selected for the post of Clerk Grade III.

6. According to Party No.1, worker or Union did not file statement of claim with relevant document and copy is not served to them, so they prayed to close the reference and decided the reference against workmen/union and in favour of Management.

Point of determination:-

1. "Whether workman is entitled for promotion?"
2. "Whether workman is entitled to any relief?"

Reason for decision:-

7. Party No. 1 filed an application (I.A.No.1) for permission to file exparte written statement and affidavit on evidence. They also filed affidavit of Mr. M.B.Kumbhare in support of their defence. He was not cross-examined by opposite party, so his statement is unrebutted. So management's defence appears to be true.

8. Judging the present case in hand, my humble opinion is that, Union/worker failed to prove that, any agreement on 02.11.1992 was executed between the management/Party No. 1 and union regarding the promotion of worker, so in my opinion, workman is not entitled to any relief. Hence it is ordered.

ORDER

मुख्य महा प्रबंधक, वेकोलि, पेंच, क्षेत्र, परासिया, जिला - छिंदवाडा व्दारा श्रीमति विनिता सनोडिया, हेल्पर, क्षेत्रिय कर्मषाला, चांदामेटा को प्रबंधन व श्रम संध के मध्य हुए समझौते दिनांक 2.11.1992 **के अधार पर लिपिकीय ग्रेड में नियमित व तदानुसार पदोन्नति लिपिकीय ग्रेड** - 3 **में ना करना उचित है । कर्मचारी कोई सहायता पाने का अधिकारी नहीं है तथा इस रेफेरेन्स का उत्तर नकारात्मक, कर्मचारी के खिलाफ दिया जाता है ।**

S. S. GARG, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1728.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 11/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/149/2004–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1728.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 11 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/149/2004-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 11/2005

Employer in relation to the management of Ena Colliery of M/S. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers :- None

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 29.07.2019

AWARD

By Order No.L-20012/149/2004 -IR (C-I) dated 17/12/2004 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the Management of Ena Colliery of M/s BCCL in superannuating Sri Ram Kumar Prasad w.e.f 1.4.04 from the services of the company is justified? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter again notices were issued to the parties and one of the notices returned with endorsement "Insufficent Address". The Case is pending since 03.01.2005 and workman is not appearing before the Tribunal. It appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1729.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 12/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/189/2004–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1729.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 12 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/189/2004-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 12/2005

Employer in relation to the management of B.T.A of M/S. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- None

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 30.07.2019

AWARD

By Order No. L-20012/189/2004 -IR (C-I) dated 17/12/2004 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the Management of Bhuli Town Administration of M/s BCCL in dismissing Sri K.C. Tripathi, Ex-Fitter Plant Operator from the services of the company vide order dated 5.1.2004 is justified? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed, but none of the parties appeared before this Tribunal. Thereafter regd. notices were issued but again no one appeared. More over one of the notices returned with endorsement "Not Known". The Case is pending since 03.01.2005 and workmen is not appearing before this Tribunal. So it appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1730.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 18/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/137/2004–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1730.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 18 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/137/2004-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 18/2005

Employer in relation to the management of Dhori Colliery of M/S. CCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers :- None

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 30/07 /2019

AWARD

By Order No.L-20012/137/2004 -IR (C-I) dated 17/12/2004 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the Management of Dhori Colliery of M/s CCL not to provide employment to Shri Binu Singh Munda, the dependent son of late Laxman Munda, Ex workman is justified? If not, to what relief is the said dependent son of the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed, but none of the parties appeared before this Tribunal. Thereafter regd. notices issued but again no one appeared. More over one of the notices returned with endorsement "incomplete Address". The Case is pending since 31.01.2005 and workmen is not appearing before this Tribunal. So it appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1731.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सेल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 58/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/92/2009–आईआर (सीएम–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1731.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 58 of 2009) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. SAIL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/92/2009-IR(CM-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 58/2009

Employer in relation to the management of Chasnalla Colliery of M/S. SAIL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- None

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 29/07 /2019

AWARD

By Order No.L-20012/92/2009 -IR (CM-I) dated 22/10/2009 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union from the Management of Chasnalla Colliery of M/s SAIL for providing dependant employment to Smt. Durga Devi, W/O Late Kanchan Mahato, is justified and legal? ii) to what relief is Smt. Durga Devi, the dependant wife of the concerned deceased employee entitled?"

2. After receipt of the reference, both parties were noticed, but none of the parties appeared before this Tribunal. Thereafter regd. notices were issued to the parties but again no one appeared. More over the notice issued to the union, returned with endorsement "Addressee died". The Case is pending since 15/01/2009 and workmen is not appearing before this Tribunal, so it appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1732.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 85/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/310/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1732.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 85 of 2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/310/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 85/2000

Employer in relation to the management of Tapin North Colliery of M/s. C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers :- Sri D.K. Verma, Adv.

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 30.07 .2019

AWARD

By Order No.L-20012/310/1999 -IR (C-I) dated 28/01/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Union/Workman for regularization of Sri Takeshwar Saw as Gr. I w.e.f 1991and payment of difference of wages for the period 1991 to 1996 for Gr.I is justified? If so, what relief the concerned workman is entitled to?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman left appearing before the Tribunal. Thereafter regd. notice was issued but even then no one appeared on behalf of the workman. Case is pending since 09/02/2000 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1733.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 132/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/482/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1733.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 132 of 2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/482/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 132/2000

Employer in relation to the management of Block II area of M/S. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers :- None

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 30.07.2019

AWARD

By Order No.L-20012/482/1999 -(C-I) dated 28/02/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the Management of Block II area of M/s. BCCL in not considering promotion of Sri R.I. Choudhury at the time of promotion of workman junior to him is proper and justified? If not, to what relief the workman is entitled and from which date?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter again notices were issued to the parties and one of the notices returned with endorsement "Addressee moved". The Case is pending since long and workman is not appearing before the Tribunal. It appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2019

का.आ. 1734.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 137/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2019 को प्राप्त हुआ था।

[सं. एल–20012/89/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 17th September, 2019

S.O. 1734.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 137 of 1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 09.09.2019.

[No. L-20012/89/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 137/1999

Employer in relation to the management of Govindpur Project of M/S. CCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- Sri D.K. Verma. Adv.

For the workman. :- None

State : Jharkhand. Industry:- Coal

Dated 30.07.2019

AWARD

By Order No.L-20012/89/1999 -IR (C-I) dated 04/06/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Govindpur Project of M/s CCL in terminating Sri Rewalal Mahto, Drill Operator Grade II/C from the services is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently workman left appearing before this Tribunal. Thereafter again two notices were issued to the parties and no one appeared on behalf of the workman The Case is pending since long and workman is not appearing before the Tribunal. It appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

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